EXHIBIT H

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ROUGH DRAFT   1

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3   ROUGH DRAFT TESTIMONY OF

4   RYAN GARLICK Ph.D.

5   TAKEN ON DECEMBER 2, 2022

6   ***

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8   proceedings was produced in realtime and is not

9   certified. The rough draft transcription may not be

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11   contradict the certified transcription of

12   proceedings. There will be discrepancies in this

13   form and the final form, because this realtime

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19   transcript.

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1   THE REPORTER: This is the videoconference

2   deposition of Dr. Ryan Garlick taken in the matter

3   of Cutting Edge Vision, LLC, versus TCL Technology

4   Group Corporation, et al., filed in the United

5   States District Court for The Western District of

6   Texas, Waco Division, Civil Action No.

7   6:22-cv-00285-ADA.

8   Today's date is December 2, 2022. The

9   time is 9:04 a.m. My name is Karen Shelton, and I

10 am reporting this deposition remotely from

11 Fort Worth, Texas. The witness is located in

12 Flower Mound, Texas.

13   Counsel, please state your appearances,

14 beginning with the noticing attorney.

15   MR. LISA: My name is Steven Lisa,

16 L-I-S-A. I am counsel for plaintiff, CEV

17 Technologies. Cutting Edge Vision, LLC. Sorry.

18   MR. LESKO: Justin Lesko on behalf of the

19 plaintiff, Cutting Edge Vision, LLC.

20   MR. XU: My name is Jason Xu from Rimon

21 Law on behalf of the TCL defendants.

22   (Mr. Konicek joins the deposition)

23   MR. KONICEK: Hi. This is Jeff Konicek.

24 I am sorry for the confusion this morning.

25   THE REPORTER: Good morning.

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1   MR. LISA: Jeff, you should state your

2 name, your location, and that you're with Cutting

3 Edge Vision for the record, please.

4   MR. KONICEK: Yeah. I'm in Champaign,

5 Illinois. My name is Jeff Konicek, K-O-N, as in

6 Nancy, I-C-E, as in Edward, K. And I am CEO of CEV.

7   (The witness was sworn by the reporter.)

8 BY MR. LISA:

9   Q. Good morning, Dr. Garlick. A few

10 questions, please. A few instructions that I'd like

11 to get if I can. I've done a lot of Zoom meetings.

12 This will be my first time using Veritext, so I'm

13 going to ask for your patience and tolerance if I'm

14 a bit awkward or slow. I'm sure Justin will be able

15 to help us if that happens. But --

16   A. Sure.

17   Q. And if anyone else has issues, obviously

18 let's all be patient and make that happen.

19   There's -- I've been -- there's a couple

20 of simple rules. One is want to make sure that you

21 only have open on your desktop the actual Zoom

22 meeting and that obviously no other documents other

23 than those that are being used in the deposition for

24 examination are open and that you're not having

25 active text chats with any colleagues or anything

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1 like that. Do you understand that?

2   A. Sure, yes. And that is the situation. I

3 do have a window open that I use to access the link

4 and I will close that. So now Zoom is the only

5 thing that is open.

6   Q. Okay. And I ask questions relatively

7 slowly. I'll ask if you can to be patient. Let me

8 finish the questions so that you have the full

9 question before you answer. Okay?

10   A. I will.

11   Q. If you don't understand a question, please

12 be sure to let me know and I'll rephrase that for

13 you so there's no confusion for the record.

14   A. I will.

15   MR. LISA: I'd like to mark as Exhibit 1

16 the deposition notice, please. We should mark as

17 PX-1 the plaintiff's notice of deposition to

18 Dr. Ryan Garlick. Do you see that?

19   THE WITNESS: I need to activate the

20 document share, I believe.

21   (Off record from 9:10 to 9:17)

22 BY MR. LISA:

23   Q. Dr. Garlick, do you see the plaintiff's

24 notice of deposition of Dr. Ryan Garlick?

25   A. I do.

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1   Q. Have you seen that previously?

2   A. I have not.

3   Q. Would you state your full name and

4 residence for the record, please.

5   A. Sure. My name is Ryan Garlick,

6 G-A-R-L-I-C-K, and I live in Flower Mound, Texas.

7   Q. And you've submitted a declaration in

8 support of a claim construction submitted by the TCL

9 group. Is that right?

10   A. That's correct.

11   Q. And as a convenience, instead of referring

12 to all the defendants, I'll just refer to them

13 globally as TCL and I'll refer to Cutting Edge

14 Vision as CEV. Is that understood by everyone?

15   A. Yes.

16   Q. Like to mark as Exhibit 2 Dr. Garlick's

17 declaration. While we're marking that, Mr. Xu,

18 under Rule 26A2BII, we're supposed to receive all

19 the facts or data considered by Dr. Garlick in

20 forming his opinions. And I understand that you and

21 Mr. Lesko have corresponded on that issue. Have we

22 in fact received all the facts or data considered by

23 the witness?

24   MR. XU: Yes, that has been confirmed in

25 the email.

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1   MR. LISA: So there's nothing additional

2   for you to deliver today? Is that right.

3   MR. XU: Not from mine.

4   Q. So we should marked as Exhibit 2 the

5   declaration of Dr. Ryan Garlick. Do you see that,

6   Dr. Garlick?

7   A. I do.

8   Q. Can you confirm that that is in fact the

9   declaration that you filed and that's your

10 signature?

11   A. It appears to be, yes.

12   Q. And attached to that document is your CV,

13 correct?

14   A. That's correct.

15   Q. Could you explain your -- what your

16 current employment is and describe it?

17   A. Yes. I'm currently a clinical associate

18 professor at the University of North Texas in

19 Denton, Texas.

20   Q. And are you actively teaching at this

21 time?

22   A. Yes.

23   Q. Teach courses these last few semesters?

24   A. I'm sorry. I didn't get the first part of

25 the question.

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1   Q. You've been teaching currently IE in the

2 last few semesters?

3   A. Yes.

4   Q. Attached to your resume, you've got a list

5 of your courses taught. Which of those are you

6 currently or actively teaching?

7   A. I'm sorry. I do want to amend the last

8 answer. I'm teaching courses this semester. You

9 mentioned the last few semesters. I did take the

10 previous semester off, but I regularly teach. That

11 was the first break I'd had in 19 years, I think.

12 So last semester I did not teach. This semester I

13 am teaching.

14   Q. Go ahead. I'm sorry.

15   A. Oh, and this semester I'm teaching IT

16 project management, internet programming, and

17 database systems.

18   Q. So the undergraduate courses that you've

19 taught listed on your resume or CV, can you identify

20 when you last taught each of the unique courses for

21 the last few years? So when did you last teach

22 computer science 1, computer science 2, symbolic

23 processing, et cetera? Just step down and give us

24 generally an idea of when each of those courses were

25 taught.

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1   A. Okay. Yeah, it's going to be a rough

2   estimate because some of them it has been some time

3   that I've -- that I've taught them. But roughly

4   speaking, computer science 1 and 2 were courses that

5   I took earlier in my career. IT project management

6   is a course that I'm currently teaching. Symbolic

7   processing, it has been several years. Human

8   computer interfaces, I believe about a year and a

9   half ago. Advanced programming was a -- sort of a

10   special topics course that was many years ago.

11   Internet programming I'm currently

12   teaching. Computer networks, it's been about one

13   year. Introduction to artificial intelligence, that

14   was one earlier in my career, so probably at least

15   ten years ago. Database systems I am currently

16   teaching. Software development 1 and 2, it's been

17   awhile on those. Those were -- like it says there,

18   kind of a capstone course, and I want to say it's

19   been at least five years or so. Again, these are --

20   these are rough -- rough time frames. Sometimes we

21   don't know our schedule until a week before the

22   semester starts, so -- secure electronic commerce I

23   teach regularly. I believe I taught it in -- about

24   one year ago. Like I said, I took a break last

25   semester.

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1   The directed studies courses were taught

2   irregularly. I haven't done one of those in several

3   years. The software development capstone is similar

4   to software development 1 and 2. It's been a few

5   years on that one. And IT capstone, that was also

6   probably, yeah, ten years ago or so.

7   The graduate courses were in conjunction

8   with the undergraduate courses listed. So, for

9   example, the artificial intelligence was the

10 graduate component of the introduction to artificial

11 intelligence course that's listed under the

12 undergraduate section. Same with secure electronic

13 commerce. I believe there may have been a separate

14 section of that for graduate students, but those

15 were several years ago also, many years.

16   Q. Thank you. The -- this resume or CV that

17 you've attached to your declaration is a little bit

18 different than the one that's attached -- that's

19 listed on your professor site at the school,

20 correct?

21   A. I have several versions. As you can see

22 at the bottom, I try to update it roughly monthly.

23 So there may be a slightly older version there.

24   Q. I'd like to mark as Exhibit 3 the CV that

25 we've downloaded from the school, if we can.

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1   (Exhibit no.   marked)

2   Q. Dr. Garlick, do you have that in front of

3 you now?

4   A. I do, yes. This appears to be the web

5 version, so I've uploaded a PDF to the school site

6 and then this is sort of a summary in HTML format.

7   Q. It includes much of the same information

8 that was in your PDF that was attached to your

9 declaration, correct?

10   A. Yes, it's going to be similar.

11   Q. What this seems to add is the legal

12 experience that you have, correct?

13   A. Let me compare.

14   Q. If you look at page 2 of Exhibit 3, you'll

15 see down at the bottom there's a qualification

16 section entitled legal, IT litigation consultant.

17 Do you see that?

18   A. On Exhibit 3? Yes, I do.

19   Q. Then further down onto page 3 of that

20 Exhibit 3, begins a section called litigation

21 support. Do you see that?

22   A. Yes, I see that.

23   Q. And that information was omitted from the

24 PDF that's attached to your declaration, correct?

25   A. Yes, it -- it appears that that litigation

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1   support section is not on the CV.

2   Q. Is that accidental or did you do that for

3   a reason?

4   A. No, I -- I don't believe that I did that.

5   I think that occurred because it was my

6   understanding that there was a desire, I guess, to

7   have that experience listed separately, and so I

8   guess it was my understanding that those documents

9   were submitted separately and so that's my

10   understanding of why that might have been omitted.

11   Q. Where is that information submitted in

12   your declaration?

13   A. I don't -- I didn't know that it wasn't.

14   Q. Explain what you mean by that.

15   A. So, no, there was no intentional omission

16   of this information. For purposes of, I guess,

17   submitting my CV with regards to legal matters, I'm

18   often asked to submit my CV and also to submit a

19   list of the litigation support that I've

20   participated in. And I have just put it all

21   together in a CV and then it's my understanding that

22   sometimes, for example, an expert witness consulting

23   service will remove that section to submit

24   separately, and I believe that's what happened here.

25   Q. So you actually submitted that litigation

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1   support information to TCL, but it was not included

2   in the CV that was attached to your declaration. Is

3   that what you're saying?

4   A. I don't -- I don't recall if -- if that

5   was submitted. I've submitted the CV to both an

6   expert witness agent, I guess, if that's the proper

7   term, and to TCL. I don't recall what version was

8   submitted to each one, but again, it was not in an

9   effort to omit a certain section.

10   Q. Well, your declaration states that it's

11 based on your personal information, correct? So you

12 did review your CV before you signed the

13 declaration, correct?

14   A. I signed the declaration. I don't recall

15 if the exhibit was attached at that point or if I

16 overlooked the fact that that section was missing.

17 Yeah, I just don't recall. Like I say, there's

18 several versions of the CV. As it gets updated, not

19 all of them are updated at the same time and it's

20 actually a bit of work to form this HTML version in

21 Exhibit 3 from a PDF, and so I don't do that as

22 often as I should.

23   Q. Well, did you happen to consider any of

24 your prior testimony in your prior litigation or

25 consulting matters in connection with the

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1 declaration and opinions you've provided here?

2   A. No, I don't believe so.

3   Q. So you did not review in connection with

4 creating your opinions or this declaration any of

5 your prior testimony provided as an expert in a

6 patent matter?

7   A. I did not rely on testimony I had

8 previously given to form my opinions in the

9 declaration.

10   Q. Well, I'm asking whether you read it.

11   A. I'm sorry. Could you state the question

12 in full?

13   Q. Sure. I'm not asking whether you relied

14 on it. I'm asking whether you reviewed or

15 considered any of the prior testimony that you've

16 given in connection with any of the litigation

17 support matters listed on Exhibit 3 in connection

18 with your being retained here by TCL.

19   A. I did not review any of my prior

20 testimony.

21   Q. And I just want to make clear. You're

22 saying that unequivocally you did not review your

23 prior testimony to determine whether what you're

24 saying here on behalf of TCL is consistent or

25 inconsistent with what you've stated previously in

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1 other testimony, correct?

2   A.   I -- I did not review any prior

3 transcripts or any of the testimony that I had

4 previously given.

5   Q.   And that would include declarations that

6 you've signed previously, correct?

7   A.   That's correct.

8   Q.   Now, I want to make sure as well that --

9 and this comes from just personal experience over

10 years. I want to make sure that you're feeling good

11 today about testifying, that there's no medication

12 or illness issues that would impair your ability to

13 testify today. Is that correct?

14   A.   That's correct.

15   Q.   You'd be surprised. I've had witnesses

16 come back later and say, you know, they were under

17 medication and things weren't right, so I just

18 wanted to make sure you're clear and good to go

19 medically, right?

20   A.   I'm feeling well. Thank you.

21   Q.   Very good. I'm glad to hear that in these

22 times.

23   A.   Yeah.

24   Q.   Now, the -- obviously the declaration was

25 provided subject to the final paragraph which is a

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1 declaration under penalty of perjury under the laws

2 of the United States of America that the foregoing

3 is true and correct, right?

4   A. Yes.

5   Q. You're aware of the seriousness of that,

6 correct?

7   A. Yes.

8   Q. And you state in paragraph 1 of your

9 declaration, which is Exhibit 2, that you're

10 competent to testify about the matters set forth

11 herein, right?

12   A. Paragraph 2.

13   Q. Paragraph 1 of Exhibit 2.

14   A. Yes, I believe I'm competent.

15   Q. Can you explain what that means?

16   A. That I am of sound mind, as you mentioned,

17 that I am not under -- sorry. Was there an

18 objection?

19   Q. No, I'm just asking you to explain what

20 you're intending by that sentence.

21   A. Just that I am of sound mind, as you

22 mentioned, I'm not under medication, I'm not feeling

23 ill, I'm confident and ready to express my opinions

24 in this declaration.

25   Q. And obviously some time has passed since

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1   you signed the declaration, so that hasn't changed,

2   correct?

3   A. That's correct.

4   Q. And does that also mean that you consider

5   yourself to be qualified as an expert to provide

6   those opinions? Is that part of the competency that

7   you're referring to there?

8   A. Yes.

9   Q. The very next sentence of paragraph 1 on

10 Exhibit 2, could you read that, please, state it out

11 loud for the record.

12   A. "I have been asked by defendants to submit

13 this declaration in support of their brief regarding

14 the proper construction of claim terms set forth in

15 Section 7 below."

16   Q. Referring to the last sentence of

17 paragraph 1 of Exhibit 2.

18   A. I apologize. "All the facts and

19 statements contained herein are within my personal

20 knowledge and are believed to be true and correct."

21   Q. And again, you signed that several weeks

22 ago. Has anything changed between the signing of

23 that declaration and the present deposition?

24   A. No.

25   Q. Did you review your declaration just to

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1 make sure before the deposition?

2   A. Could you repeat the question?

3   Q. Sure. Did you review your declaration

4 just to be sure that everything remains true and

5 correct prior to the deposition?

6   A. I did.

7   Q. And if you find out during this deposition

8 that something is not true or correct or believed to

9 be true or correct, you would certainly change that

10 testimony, correct?

11   MR. XU: Objection, form. I'll just put

12 an objection, vague.

13   A. If I found a statement that I believed was

14 not true, then yes, I would point that out.

15   Q. Thank you. True or correct. If you

16 believe a statement is not correct, you would take

17 this opportunity under oath to correct it, right?

18   A. Yes.

19   Q. And I think we all want you to do that.

20 I'm just making sure that one of the goals here is

21 to make sure that we get from you what you still

22 believe to be true and correct. Is that understood?

23   A. Yes.

24   Q. Can you identify for me, Dr. Garlick, what

25 else you may have reviewed or did review prior to

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1 this declaration? I'm sorry. Prior to the

2 deposition.

3   A. So I believe there's a paragraph in the

4 declaration that explains that. I reviewed both of

5 the patents, and I reviewed their histories.

6   Q. And was that in preparation for the

7 declaration or in preparation for the deposition?

8   MR. XU: I just want to caution the

9 witness not to disclose attorney-client privilege,

10 but with that caution, you can answer.

11   A. Could you repeat the question, please?

12   Q. Sure. Your answer was referring to what

13 the declaration stated that you had reviewed, which

14 was both of the patents and the histories for the

15 patents. And I'm asking whether there is anything

16 additional that you reviewed in preparation for the

17 deposition?

18   MR. XU: Same caution.

19   A. No, I don't believe -- I don't believe

20 there was any additional information that I

21 reviewed.

22   Q. So just to be clear, for today's

23 deposition, you reviewed your declaration, both of

24 the patents, the file histories, and nothing more?

25   A. That's correct. I believe that's correct,

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1 yes.

2   Q. So referring to, for the record,

3 Exhibit 2, your declaration, paragraph 21, I believe

4 that's the paragraph you're referring to that

5 describes what you looked at. Is that correct?

6   A. Yes. So as far as documents go, I

7 reviewed the patents, their histories, and, yes,

8 just my general knowledge. And there were

9 conversations with the attorney as well.

10   Q. I'm sorry. We lost our telephone link

11 here. Can you hear me now?

12   A. Yes.

13   Q. So I'm going to ask you, Dr. Garlick,

14 rather than me trying to find the live transcript to

15 just repeat your answer or I can ask the question

16 again and then you can review, provide the answer.

17 So we're now on my computer audio, gentlemen, so

18 that we have that. Our phone line died and we were

19 having issues with phones yesterday. So

20 Dr. Garlick, I was referring you to paragraph 21 of

21 your declaration, Exhibit 2. Do you see that?

22   A. Yes.

23   Q. All right. And is that the paragraph you

24 were referring to previously that described what you

25 had reviewed in preparation for your declaration?

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1   A. Yes.

2   Q. All right. And the only documents you

3 identify in paragraph 21 is the '761 patent, the

4 '472 patent, and their respective prosecution

5 histories, correct?

6   A. That's correct.

7   Q. All right.

8   A. Those are the only documents that I

9 reviewed.

10   Q. And the rest of the information there is

11 referring to general knowledge of those in the field

12 such as pictures over network or transmitting data

13 such as pictures over a network to a server as of

14 October 17, 2005, right?

15   A. Yes.

16   Q. So it's the '761 patent, the '472 patent,

17 the respective prosecution histories, and the

18 general knowledge of those in the field.

19   A. What was the question?

20   Q. That's what you considered in preparation

21 for the declaration?

22   A. Those were the documents that I

23 considered. There were also -- in preparation for

24 the deposition? Is that what the question's

25 regarding?

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1   Q. No. Let's back up and be clear. So in

2 preparation for the declaration, I'm trying to

3 identify all the documents that you relied on and

4 what else you have relied on or considered.

5   So presently you've identified by way of

6 documents the '761 patent, the '472 patent, and the

7 respective prosecution histories, and that's all by

8 way of documents?

9   A. Those are the documents that I relied upon

10 in preparation for the declaration.

11   Q. All right. So I'm using a different word.

12 I'm using considered. It may be that you looked at

13 something and thought it's awful and therefore don't

14 want to rely on so there's a difference between rely

15 and consider. So I'm asking a very specific

16 question. All right?

17   In preparation for the declaration, what

18 documents did you review?

19   MR. XU: Vague.

20   Q. I'm trying to be as clear as I can. What

21 document did you pick up or put on your computer

22 screen and look at, Dr. Garlick, in preparation for

23 the declaration?

24   A. As I sit here today, the version of the

25 declaration that is submitted, these are the

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1 documents that I considered.

2   Q. No other documents were considered?

3   A. Not for the declaration that was

4 submitted.

5   Q. Well, what about for earlier versions of

6 the declaration?

7   MR. XU: I just caution the witness not to

8 disclose attorney-client privileged information.

9   MR. LISA: Well, if there's

10 attorney-client privileged information, Dr. Garlick,

11 that you're not going to describe to us, we're

12 entitled to know that you are -- that there's

13 information you're not providing us.

14   It's clear under the rules that we're

15 entitled to know every document that this witness

16 has considered and looked at in preparation for his

17 testimony, and that's not just the final version of

18 the testimony.

19   So your objection is noted.

20   Q. But, Dr. Garlick, I'm asking a very simple

21 and specific question. What documents did you

22 review prior to filing a declaration in this case?

23   MR. XU: Same objection.

24   A. So for -- for the version that was

25 submitted, as I sit here today, these are the

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ROUGH DRAFT   23

1 documents that were reviewed.

2   Q. Prior to any declaration being drafted,

3 what documents did you review prior -- I'm sorry.

4 Strike that.

5   Prior to any declaration being submitted,

6 what documents did you review as part of the process

7 of forming your opinions in this case?

8   MR. XU: Objection, vague.

9   A. So -- could you repeat the question?

10   Q. Sure. What documents did you review in

11 this case in preparation for drafting any

12 declaration?

13   A. For the declaration that is Exhibit 2,

14 these are the documents that I reviewed.

15   Q. I'm asking a different question. This has

16 nothing to do with Exhibit 2. Okay? I'm asking,

17 Dr. Garlick, after you were retained in this case,

18 what documents did you review?

19   MR. XU: Objection. Outside the scope

20 because Dr. Garlick here is to be deposed here

21 regarding the declaration he filed in support of

22 TCL's claim construction opening brief.

23   MR. LISA: The rule provides that we're to

24 see facts or data considered by the witness in

25 forming his opinion, not in forming the a final

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1 opinion. We're not limited to what is carefully

2 drafted. But your objection's noted, so I'll ask it

3 again.

4   Q. Dr. Garlick, what documents did you review

5 after being retained in this case in preparation for

6 forming your opinions?

7   MR. XU: I just want to inject because

8 there might be opinions unrelated to the claim

9 construction, so I think if you -- Steve, if you

10 clear your scope regarding the claim construction,

11 that that's where the vagueness is coming.

12   Q. Dr. Garlick, after being retained in this

13 case, what documents did you review or consider in

14 connection with forming your opinions relating to

15 claim construction or indefiniteness.

16   A. My opinions are contained in the

17 declaration that was submitted, and those opinions

18 are based on the documents listed in paragraph 21.

19   Q. What documents did you review that you

20 decided not to rely upon?

21   A. There -- I'm sorry. Could you repeat the

22 question?

23   MR. LISA: Ms. Shelton, could you repeat

24 the question, please.

25   THE REPORTER: Question: "What documents

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ROUGH DRAFT   25

1 did you review that you decided not to rely upon?"

2   A. There -- there were -- there were no

3 documents that I reviewed that -- that were

4 formed -- that formed my opinions in the report.

5 Hold on. That's -- that's not what I meant to say.

6   As I sit here today, my opinions are

7 contained within this declaration, and my opinions

8 relied on the documents listed in paragraph 21.

9   MR. LISA: Ms. Shelton, can you repeat the

10 question again for the witness?

11   THE REPORTER: Question: "What documents

12 did you review that you decided not to rely upon?"

13   A. Yeah, I don't have anything to add to my

14 previous answers.

15   Q. Dr. Garlick, I'm going to ask you to

16 listen to the question carefully and answer the

17 question that is asked. Ms. Shelton, please repeat

18 the question again.

19   MR. XU: Same objection.

20   A. For this declaration, there were no

21 documents.

22   Q. So to be clear, you did not look at a

23 document in preparation for this declaration that

24 you decided not to rely upon?

25   MR. XU: Same objection.

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1   A. In preparing this declaration, I

2 considered the '761 patent, the '472 patent, and

3 their respective prosecution histories.

4   Q. So what other documents did you look at

5 after you were retained?

6   MR. XU: Objection. I'll caution the

7 witness not to disclose attorney-client privileged

8 information.

9   MR. LISA: Mr. Xu, if the witness is

10 withholding documents that he reviewed based on a

11 claim of attorney-client privilege, then we will

12 need a list from you of the documents that are being

13 withheld and the basis for the claim of privilege.

14 Is that request understood?

15   MR. XU: Yes, understood.

16   MR. LISA: So Ms. Shelton -- go ahead, I'm

17 sorry.

18   MR. XU: I'm not instructing the witness

19 not to answer. I'm just cautioning would be my

20 objection.

21   MR. LISA: Given the way the witness is

22 answering or not answering these questions and given

23 your objections, I'm making a request on behalf of

24 CEV that TCL provide to us a withheld documents

25 list, any documents that were withheld from the

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ROUGH DRAFT   27

1 production that was supposed to be provided under

2 26.a.2.B sub ii. All right? And so if the witness

3 reviewed documents and there is a claim of privilege

4 that's being made right now by TCL, then let's just

5 get a list and we can get that issue before the

6 court. So it's not a big debate. It's just let's

7 get the standard withheld document list. Okay? Is

8 that clear?

9   MR. XU: Yeah, if there are, obviously.

10   MR. LISA: Ms. Shelton, I'm going to ask

11 if you would to compile any requests separately at

12 the back of the deposition if that's possible.

13   THE REPORTER: Okay.

14   MR. LISA: Thank you.

15   Q. So Dr. Garlick, let me ask this again.

16 Besides documents identified in paragraph 21 of your

17 declaration, Exhibit 2, did you review any other

18 documents, yes or no, and that does not require that

19 you identify them?

20   A. In preparing this declaration, I have

21 considered the '761 patent, the '472 patent and

22 their respective prosecution histories.

23   Q. I'm going to keep asking this question

24 until we get an answer, Dr. Garlick. I'm asking,

25 after you were retained, did you review any other

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ROUGH DRAFT   28

1 documents other than those listed in paragraph 21,

2 and that is not keyed to only those in connection

3 with this declaration.

4   To be clear, I'll say it again. After you

5 were retained, did you review at any time any other

6 documents other than those listed in paragraph 21 of

7 your declaration, Exhibit 2?

8   MR. XU: Objection because Dr. Garlick

9 here is -- after he was retained may or may not have

10 tasked to do other things related to the case. But

11 he's here to be deposed regarding the declaration he

12 compiled supporting TCL's claim construction opening

13 brief.

14   MR. LISA: That's fine. And you can

15 object on relevance, but a speaking objection isn't

16 necessary. It's a simple yes or no question. He's

17 not revealing anything, Mr. Xu.

18   Q. I'm just asking, yes or no, Dr. Garlick,

19 did you review other documents after being retained

20 other than those identified in paragraph 21?

21   A. Yes.

22   Q. What else -- which of those documents

23 related in any way to claim construction?

24   A. None of them.

25   Q. So it is your testimony that not a single

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ROUGH DRAFT   29

1 document that you reviewed after being retained by

2 TCL, other than those in paragraph 21, related to

3 claim construction?

4   A. I believe that's correct.

5   Q. So the flip side of that is that all of

6 the opinions that you've provided on behalf of TCL

7 are based solely on the '761 patent, the '472

8 patent, and their respective prosecution histories,

9 at least with respect to documents?

10   A. Yes, I believe that's correct.

11   Q. Now, when you say the '761 patent and the

12 '472 patent, what do you mean by that?

13   A. I mean the patent document, the claims and

14 the specification, the entire document.

15   Q. I'd like to mark as Exhibit 4 the '761

16 patent and Exhibit 4A the '472 patent.

17   (Exhibit no.   marked)

18   Q. Okay. Those should be in the file now.

19 So if you look at Exhibit 10 and exhibit -- I'm

20 sorry, Exhibit 4 and 4A.

21   A. Yes, I see them in the folder.

22   Q. Are those the patents that you reviewed?

23   A. Take a look here.

24   Q. That's Exhibits 4 and 4A.

25   A. Yes, they appear to be the patents.

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ROUGH DRAFT   30

1   Q. So when you -- if you would look first at

2 Exhibit 4, Dr. Garlick.

3   A. Sure.

4   Q. And you said you reviewed the patent,

5 '761 patent. What parts of the patent did you

6 review?

7   A. The entire thing.

8   Q. So there's quite a few items of foreign

9 patents and references and other publications. Did

10 you review them?

11   A. No, I didn't go through all of the

12 references cited. I meant that I read the abstract,

13 the specification, the claims. I looked at the

14 diagrams.

15   Q. So when you -- to be clear, when you state

16 that you reviewed the patent, '761 patent,

17 Exhibit 4, it was the text and the drawings of the

18 actual patent, correct?

19   A. That's correct.

20   Q. All right. So you did not review the

21 materials listed on pages 2, 3, 4 of the patent,

22 Exhibit 4, correct?

23   A. I did not go through any of the referenced

24 documents, that's correct.

25   Q. And if you look at Exhibit 4A, is it also

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1 correct that you did not review the materials on

2 pages 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,

3 15, correct?

4   A. I scanned over this material, but I did

5 not look up the referenced -- the references.

6   Q. So you're aware that you can go to a

7 document like Google patents or go to the patent

8 office and plug in a patent number and look at them,

9 correct?

10   A. Yes, I'm aware of that.

11   Q. And you've done that previously, right?

12   A. Yes.

13   Q. Okay. But you did not do that for any of

14 the references that are listed in the -- what I will

15 say the preliminary pages of either Exhibits 4 or

16 4A, correct?

17   A. That's correct.

18   Q. So when your declaration states that you

19 reviewed the two patents-in-suit, the '472 and '761

20 patents, what you intend by that is that you

21 reviewed the abstracts and the text beginning after

22 the title of the invention through to the claims,

23 correct, and the figures?

24   A. Yes, that's correct.

25   Q. So is it fair to say you didn't study any

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ROUGH DRAFT   32

1 of the related references or prior arts or other

2 publications in the patents, cited in the patents?

3   A. I did not review the citations, the cited

4 patents.

5   Q. There is in both patents a listing of

6 related U.S. application data. Do you see that?

7 It's on page 2 of the '472 patent, Exhibit 4A and

8 also on page 2 of the '761 patent, Exhibit 4. Do

9 you see that?

10   A. Yes, I see that section.

11   Q. Did you -- when you said you reviewed the

12 file histories of the patents, did you review the

13 file histories or related patents listed in those

14 paragraphs on page 2 of Exhibit 4 and 4A?

15   A. If those were contained within the file

16 history, then it's something that was briefly looked

17 at. Those patent histories are very lengthy, and so

18 I don't recall if this information was contained

19 specifically there for these references, but --

20 yeah, that's my answer.

21   Q. Did you review separately any of the

22 related U.S. applications identified on page 2 of

23 Exhibits 4 or 4A?

24   A. Not separately, no.

25   Q. So you -- to be clear, you reviewed, if at

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ROUGH DRAFT   33

1 all, only the parts of those file histories that

2 were contained in the two specific file histories

3 for these patents, Exhibits 4 and 4A?

4   A. The lengthy file histories that were

5 attached to the '472 and the '761 are what I -- are

6 what was reviewed. And that's my answer.

7   Q. So you didn't make any effort to go back

8 and review any of the specific file histories for

9 the earlier related patents, correct?

10   A. I did not specifically look up a previous

11 application number.

12   Q. Did you look -- do you see that there are

13 other patents listed in the related U.S. application

14 data that issued to Mr. Konicek based on this

15 specification?

16   A. Which section are you referring to?

17   Q. The related U.S. application data on page

18 2 of Exhibits 4 and 4A.

19   A. The related U.S. application data. I see

20 that section here. And I'm sorry. What was the

21 question?

22   Q. You see that there are patent numbers

23 identified there as well, correct?

24   A. Yes.

25   Q. Did you separately review any of the other

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ROUGH DRAFT   34

1 patents that are not '761 or the '472 patents?

2   A. It's the same answer as before. If those

3 were referenced in the history of the '472 or the

4 '761 patent, then I looked through the file

5 histories. I did not separately go, as you

6 referenced, to Google patents and insert any of

7 these numbers.

8   Q. Well, to be clear, Google patents was just

9 an example, Dr. Garlick.

10   A. Sure.

11   Q. There's other ways of getting a patent as

12 well. But my point that I'm making is that these

13 patents are in fact referenced in the file history.

14 So your answer would seem to imply that you did

15 review that.

16   A. I -- I reviewed them, as I said, as a

17 component of the file histories. What was --

18   Q. Go ahead.

19   A. But your question before was about

20 specifically and separately looking up these

21 numbers, and I did not do that.

22   Q. Let me ask it a different way. If you

23 look at Exhibit 4, the related U.S. application

24 data, at the very bottom of that section there's a

25 patent number, 7697827. Do you see that?

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ROUGH DRAFT   35

1   A. I'm sorry. You're going to have to give

2 me a page number here. This is Exhibit 4A?

3   Q. Exhibit 4, page 2.

4   A. Switch to 4, page 2. Okay. I'm on

5 Exhibit 4. Sorry. Page 2?

6   Q. Related U.S. application data. Do you see

7 that?

8   A. Yes.

9   Q. And do you see the patents listed there

10 following the now patent number, and then there are

11 patent numbers listed?

12   A. Yes.

13   Q. Is it your testimony that you, as part of

14 your review, reviewed those patents that are listed

15 there?

16   A. I would say as they were contained within

17 the file history of the '472 or '761 patent.

18   Q. You mean if the patent in its entirety was

19 contained within the file history, one of these

20 patents, you reviewed it?

21   A. I'm saying I reviewed the file history.

22   Q. Okay. So I'm -- and that's the question

23 you keep answering. I'm asking a different

24 question. You can say you don't recall. You can

25 say you don't know. You can say anything other than

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ROUGH DRAFT   36

1 not answering. All right?

2   Question is, did you review, for example,

3 7697827? It's the last patent listed in the related

4 U.S. application. Did you review that patent?

5   A. Not separately, as I said before, but

6 as -- as it is referenced in the file history or as

7 it was -- as these documents were referenced or if

8 they were cited in the file history, then that was a

9 part of the document that I reviewed.

10   Q. Explain your answer if you can.

11   A. I think that's the -- that's my answer.

12   Q. So you read from front to back patent

13 number 7697827? You actually picked it up and read

14 the patent as it is referenced in the file history?

15   A. No.

16   Q. So you didn't read the patent. You read

17 that it was referenced in the file history. Is that

18 correct?

19   A. The file histories for one of them I

20 believe was over 10,000 pages. I -- I don't recall

21 every section of it that I -- that I looked at.

22   Q. So is your answer you don't recall whether

23 you reviewed that patent?

24   A. I -- I used search tools on the file

25 histories. I read sections of them. I skimmed

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1 sections of them. Sections of them are in different

2 languages. And so I don't recall every specific

3 detail of the 10,000-plus pages that were contained

4 in that document.

5   Q. Is it your testimony that the file

6 histories for these two patents, Exhibit 4 and 4A,

7 contain parts of the earlier file histories? Is

8 that what you're saying?

9   A. Could you repeat the question? Sorry.

10 Could you repeat the question?

11   Q. Sure. I withdraw the question. I'll move

12 on. Like to mark as Exhibit 5 --

13   (Exhibit 5 marked)

14   Q. Dr. Garlick, I've asked to mark as

15 Exhibit 5 a group of documents that relate to the

16 syllabus that you have and that you teach at the

17 university. Should be up there shortly.

18   A. All right.

19   Q. Do you have that in front of you now,

20 Dr. Garlick?

21   A. I do, yes.

22   Q. Have you seen that previously?

23   A. Not in this form. This is something that

24 is automatically generated by the university, I

25 believe, based on our internal systems.

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ROUGH DRAFT   38

1   Q. Do you recognize what is reflected there

2 on Exhibit 5?

3   A. Yes. It appears to be a list of the

4 scheduled courses.

5   Q. Could you explain in more detail what that

6 shows on Exhibit 5, please?

7   A. Just the list of courses that I've taught

8 in the past.

9   Q. And the courses are listed on the left by

10 course title and the date that you taught them,

11 correct?

12   A. Yes. I would add that some of the courses

13 here are automatically generated, and, for example,

14 on the first page here, I notice CSCE4999.749. That

15 749 is a code for me. That was not a class that I

16 actually taught. It's just that, you know, every

17 semester if someone were to take a senior thesis

18 with me, that would be the course number. So this

19 isn't an accurate reflection of every -- everything

20 that was taught.

21   Q. So to clarify for the record, the -- on

22 page 1 of Exhibit 5, there is partway down a senior

23 thesis spring 2021. That's what you're referring

24 to, correct?

25   A. Yes, yes.

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ROUGH DRAFT   39

1   Q. You may or may not have had a student

2   taking it, correct?

3   A. That's correct. In fact, for that one

4   there was not.

5   Q. Are there any other inaccuracies you see

6   on that first page?

7   A. I mean, like when we went through this

8   before, I -- you know, I have a rough recollection

9   of the time frames of teaching certain things, and

10   so I would have to cross-reference this with our

11   canvass system to see exactly where things are. I

12   notice also it looks like some -- there's a summer

13   course listed in 2017 at the bottom of page 2, and I

14   don't recall that. I haven't taught summers in

15   quite awhile.

16   Again, this is an automatically generated

17   thing that comes from a system and our registration

18   system changes frequently, updates are made,

19   schedules are revised towards the end of the

20   semester and sometimes all the information isn't

21   accurately captured by these systems.

22   Q. Okay. So this is something kept in the

23   regular course of the school's business, correct?

24   A. It's something that's automatically

25   generated, I believe, from -- from a snapshot that's

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1 taken from the registrar's office based on our class

2 assignments is my understanding. I don't know for

3 sure. This is an internal system that I --

4   Q.   Have you ever looked at this before?

5   A.   I submit information to the faculty

6 information system and -- but as far as the courses

7 go, I don't submit this data. It's generated

8 automatically.

9   Q.   But my question was, have you gone to this

10 part of the system and looked at, clicked on

11 previously-scheduled teaching and looked at this

12 previously?

13   A.   We have a separate system called "My UNT,"

14 and that's where I go to look up my teaching

15 information.

16   Q.   So my -- my question was whether you've

17 gone to this site, clicked on previously-scheduled

18 teaching and looked at this data ever before.

19   A.   Normally -- I don't recall. I may have in

20 the past. It's not something that I regularly

21 consult to, you know, form a list of the courses

22 that I've taught or something like that. Our main

23 interaction with FIS, the faculty information

24 system, is to submit our performance information, so

25 the committees we were on, things like that, so that

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1 they can evaluate us at the end of the year. That's

2 our main use of this system.

3   Q. So the answer is yes, you've looked at it

4 previously?

5   A. This page, I don't know that I can say

6 that. Again, this is -- we're talking about over

7 the last probably ten years that this was in use. I

8 don't know. I may have. It's not something that I

9 recall.

10   Q. If we were to take the courses taught

11 listed on your CV attached to the declaration,

12 Exhibit 3, and correlated that to the list of

13 courses here on Exhibit 5, would that generate a

14 relatively accurate listing of the courses you've

15 taught?

16   A. Well, I mean, you'll recognize some of the

17 names here. I would say in general, no, because, as

18 I mentioned, this is going to have courses for which

19 I have a code assigned, the 749 code, and that do

20 not translate into an actual class. It's a number

21 for students to use to register with. And so, I

22 mean, this will give you an idea that I have taught

23 secure electronic commerce, but as far as a direct

24 mapping, no.

25   Q. If there's a syllabus shown as there is on

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1 Tab 4, would that indicate that you very likely

2 taught the class?

3   A. Yes, a syllabus attachment, the syllabi

4 are uploaded to the system and so yes, if there's a

5 syllabus there, it's likely that I taught the

6 course.

7   There were occasionally substitutions.

8 And again, like I said, this is a snapshot of a

9 moment in time and instructors change. It's

10 possible that I can upload a syllabus for a course

11 and then someone else gets assigned to it the day

12 before the class starts and they forget to upload

13 their syllabus and so forth. So this is an

14 automatically generated document that is -- you

15 know, and like I mentioned, it includes information

16 that may vary from the final actual taught courses.

17   Q. If you cursor down to page 2 of Exhibit 5,

18 you'll see a course CSCE3410, advanced programming,

19 Android. Do you see that?

20   A. 3410.

21   Q. It's the second page -- I'm sorry. It's

22 the -- it's page 6. It's the actual course

23 syllabus.

24   A. Okay. Sorry. Page 6. Ah, okay, yes,

25 advanced programming Android. Yes.

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ROUGH DRAFT   43

1   Q. It lists you as an instructor. Do you see

2   that?

3   A. Yes.

4   Q. So did you teach an advanced programming

5   Android course?

6   A. Yes.

7   Q. And you recall teaching that course,

8   right?

9   A. It's been awhile, but yes.

10   Q. And did you recommend a textbook for that

11   course?

12   A. Yes. It looks like Professional Android 2

13   Application Development by Meier.

14   Q. Are you familiar with that book?

15   A. It's been quite awhile. It's been awhile

16   since I looked at it.

17   Q. Well, why did you recommend that book or

18   use that textbook?

19   A. I believe I had -- I had read it and

20   thought it was -- it was a worthwhile book. For a

21   lot of my courses, we will use a textbook. For some

22   we just use online resources. And so I think that's

23   why it was recommended because that some students

24   won't read the book and we know that, and so we'll

25   leave them with the online resources. But for those

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ROUGH DRAFT   44

1 who like to read, I thought that was a good one.

2   Q. All right. So you thought that the

3 Professional Android 2 Application Development book

4 by Meier was a good book?

5   A. I --

6   Q. And you taught from it?

7   A. I don't -- I wouldn't say that I taught

8 from it. It's -- it's something that we may have

9 referenced within the course or that I used to

10 prepare course materials.

11   Q. Some of your syllabi have online course

12 materials as you noted. This one doesn't. You see

13 that?

14   A. I'm sorry. I don't see what you're

15 referring to here.

16   Q. Well, there are some of your syllabi

17 that -- syllabuses that actually say that there are

18 no textbooks and online materials are used.

19   A. Uh-huh, yes.

20   Q. And this one lists as the only textbook to

21 use Android 2 application development by Meier,

22 right?

23   A. Yes. As a recommended book.

24   Q. And in fact, you used that for many

25 semesters, correct?

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ROUGH DRAFT   45

1   A. I don't recall.

2   Q. Well, in fact, you later substituted

3 exhibit -- I mean the Android 4, the updated edition

4 by Meier for use in teaching Android advanced

5 programming, correct?

6   A. Again, I don't recall the versions of

7 textbooks that I used in courses.

8   Q. So you have no recollection of whether you

9 later went to the updated book or used the updated

10 book Android 4 application development, Professional

11 Android 4 Application Development by Meier?

12   A. The field of app development changes very

13 rapidly, and so if there were a new book available,

14 I probably would have recommended it.

15   Q. Trying to find a page number for you,

16 Dr. Garlick. If you would cursor down to page 13.

17 There's another instance of advanced programming

18 Android showing you as an instructor.

19   A. Okay. I see that.

20   Q. All right. What textbook do you recommend

21 there?

22   A. There it says the Professional Android 4

23 Application Development.

24   Q. And I'll just kind of hold it up there.

25 You've seen that before, right?

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ROUGH DRAFT   46

1   A. I have.

2   Q. Do you recognize that book?

3   A. The terminator book.

4   Q. Right, right. Okay. So in fact, you've

5 used multiple editions of that book to teach the

6 course multiple times, right?

7   A. It appears so. I will admit to the

8 occasional mistake and error in my syllabi, which my

9 students point out regularly.

10   Q. All right. So is this an error or not?

11   A. I don't believe so.

12   Q. Okay. All right. And in fact, and under

13 oath, you believe the Android 4 professional

14 application development book to be a good book for

15 you to teach from, correct?

16   A. I recommended it for the course.

17   Q. All right. And certainly students were

18 taking the course, you wouldn't want them to use a

19 bad book, right?

20   A. That's right.

21   Q. On the record, a lot of universities in

22 fact require that you teach from authoritative

23 books, right?

24   A. I'm sorry. The audio broke up a little

25 bit.

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ROUGH DRAFT   47

1   Q. Sure. Are you aware that many

2 universities require that professors teach from

3 books that they consider to be authoritative?

4   A. I would say that the textbook approval

5 process is confusing.

6   Q. Well, I teach at the law school, so I

7 understand that. But isn't it true that if you

8 actually select a course book to teach from as

9 opposed to creating your own lecture notes that

10 there is a requirement for what you can use as a

11 textbook, right?

12   A. It usually goes through a committee. That

13 doesn't always happen.

14   Q. Did it happen in this case?

15   A. I don't recall.

16   Q. But certainly in meeting your duties to

17 provide textbooks that you believe to be worth while

18 and accurate, the Meyer book, professional Android

19 application development is one of them, correct?

20   A. I'm sorry. A book that I believe to be

21 what?

22   Q. Worthwhile and accurate to use for

23 teaching.

24   A. I think that's fair.

25   Q. Yeah, I'd like to actually mark as

ROUGH DRAFT   48

1 Exhibit 5 the cover and copyright page of the

2 Android 4 Application book by Mr. Meier.

3   MR. XU: So Steve it's Exhibit 5? I think

4 you already --

5   MR. LISA: I'm sorry, Exhibit 6. You're

6 seeing my inability to keep up with technology here.

7   Q. All right. So that should be there now.

8   A. Okay. Yes.

9   Q. All right. So marked as Exhibit 6 is the

10 Professional Android 4 Application Development book.

11 And do you recognize that?

12   A. I do, yes.

13   Q. And that is in fact the book we've been

14 discussing over the last few minutes, correct?

15   A. Yes.

16   Q. And that is the book that's used in at

17 least the course on Android application development

18 by you, correct?

19   A. I believe so, yes.

20   Q. Turning back to your syllabus.

21   A. This is --

22   Q. You teach a course on computer networks,

23 correct?

24   A. I have in the past, yes.

25   Q. I'd like to mark as Exhibit 7 a book that

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1 is listed in your syllabus and see if you recognize

2 that, entitled Computer Networking, 5th Edition, a

3 Top-Down Approach. That should be in your file now,

4 Dr. Garlick. Do you see that?

5   A. I do, yes.

6   Q. Do you recognize that book?

7   A. I believe that's a book that we used in an

8 earlier version of the networking class. I'm not

9 sure about the version number or --

10   Q. Well, if you go back to Exhibit 5, your

11 syllabus course --

12   A. Okay.

13   Q. -- and you cursor down, there is a course

14 entitled Introduction to Computer Networks, CSCE3530

15 listing as instructor Ryan Garlick.

16   A. And sorry. Which page are we on?

17   Q. Oh, page 10 of 26.

18   A. Okay. Okay. Yes.

19   Q. So do you recognize that as a course

20 you've taught at the university?

21   A. Yes.

22   Q. And do you see the book, the textbook that

23 is referenced there?

24   A. I do.

25   Q. And is it fair to say that you recommend

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1 that book and use that book as a textbook because

2 you believe it to be a good book to use for the

3 course you're teaching?

4   A. Yes. I will add that in later versions of

5 this, as the course moved to an online format, I

6 think we had less focus on textbooks and more on

7 video materials. The pandemic really threw a wrench

8 in everything related to school, as I'm sure you

9 know, and so -- but the answer to your question is

10 yes.

11   Q. Thank you. And certainly the further, you

12 know, if you look back through your syllabus

13 listings, they go all the way back to 2010. So

14 that's well prior to the pandemic, correct?

15   A. Yes.

16   Q. So in and around the time period of 2010

17 through up until when the pandemic came, you were

18 probably more likely to use textbooks, correct?

19   A. We moved to online a bit before the

20 pandemic, just to alleviate some of our congestion

21 problems with classroom space. So it wasn't a

22 perfect coinciding of online courses with pandemic

23 arrival, but yes, that is a textbook that we used.

24   Q. Mark to mark as exhibit 8 another textbook

25 called How to Program, 6th edition. Do you see that

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1   book, Dr. Garlick?

2   A. I do, yes.

3   Q. Do you recognize that book?

4   A. This -- this looks familiar. This would

5   have been, like I say, from a course early in my

6   career, if this is the version that was used and so

7   on. You can see 6th edition. I don't recall

8   edition numbers. The cover is very unique and looks

9   familiar.

10   Q. If you would go back to your syllabus,

11   Exhibit 5, and go down to page 9 of 26.

12   A. Okay. Sorry. Syllabus is Exhibit --

13   Q. 5.

14   A. -- 5. Okay. To page 7, you said? Okay.

15   Q. Page 9 of 26. Page 9, not page 7.

16   A. Okay. Let's see. Okay. Page 9, I see

17   CSCE1040, course policies.

18   Q. Instructor Ryan Garlick, right?

19   A. Page 9, I have -- I have course policies.

20   Q. All right. Go up a page then.

21   A. Okay. Okay. Yes. I see textbook there.

22   Q. Right. And that's the textbook that we

23   just marked as Exhibit 8, correct?

24   A. Yes.

25   Q. And that is the textbook that you used at

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1 or about the time you taught that course, correct?

2   A. It appears so, yes. I -- I list textbooks

3 here. We tend to use in-class materials extensively

4 also, so --

5   Q. But you listed this textbook because you

6 believed it to be a good textbook for computer

7 networking, correct?

8   A. This is a programming course.

9   Q. Why did you list the book?

10   A. That's the topic of the course. This is

11 computer science 2.

12   Q. Did you list this book because you

13 believed it to be a good book to use as a textbook

14 for this course?

15   A. Yes.

16   Q. Thank you. Did you review any of these

17 textbooks prior to submitting your testimony in a

18 declaration, Exhibit 2?

19   A. Did I review the books for the

20 declaration?

21   Q. Before submitting the declaration.

22   A. Well, I mean, I've reviewed these books

23 for the courses, and that --

24   Q. When was the last time you reviewed each

25 of these books?

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1   A. Oh, it's -- I mean, I can't tell you

2 individually for each book. This book, the see how

3 to program, it's probably been at least a decade.

4   Q. Did you review any of these books after

5 you were retained in this matter?

6   A. No.

7   Q. So your opinions don't take into

8 consideration anything that might be said in these

9 books specifically, correct?

10   A. That's correct.

11   Q. How about your course notes and lecture

12 notes? Did you consider any of them after you were

13 retained in this case?

14   A. Not that I recall.

15   Q. Are any of your courses recorded online

16 via Zoom?

17   A. I have some lectures that I have recorded

18 online.

19   Q. And they're available for students to

20 review even after the date of the lecture, correct?

21   A. Our canvass system, I don't know. I think

22 it may close that off for student access. I don't

23 know the answer to that.

24   Q. All right. Would you be surprised if

25 they're available to review after the date that you

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1 record it?

2   A. No, that wouldn't surprise me.

3   Q. So did you review any of those to see if

4 your testimony in the declaration was consistent

5 with any of your statements made while teaching?

6   A. Did I review the videos to see if they

7 were consistent with my statements made --

8   Q. In the declaration.

9   A. Oh, in the declaration. I did not review

10 the videos prior, after being retained.

11   Q. So --

12   A. Maybe in the course of teaching but not in

13 regards to the case.

14   Q. In connection with your Android

15 application course, did you teach them how to

16 actually create an application?

17   A. So, again, a rough recollection of this

18 because it has been awhile. We went over the tools

19 that are used to create apps. I showed them some

20 sample code. They went through some code. I

21 believe the students made some apps on their own. I

22 don't recall all the specific details of the -- of

23 the curriculum.

24   Q. You have taught courses in which the goal

25 was to actually create an Android application,

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1 correct?

2   A. I believe that -- I always encourage that.

3 And so whether or not it was a requirement, I don't

4 recall.

5   Q. What level student would have taken the

6 Professional Android 4 Application Development

7 program, course?

8   A. You're referring to the Android course

9 that I taught?

10   Q. Yes.

11   A. That would have been -- I believe if that

12 course number starts with 3, that's generally a

13 course designed for juniors. 4 is seniors and so

14 on. But we get a mixture generally. But that's --

15 the prerequisite structure means it will typically

16 be an upper division student.

17   Q. So did that course include teaching

18 students at or about the junior level how to program

19 menus and user interfaces and things such as that in

20 an Android environment?

21   A. So in those courses at that time period in

22 my career, I was focused on project-based learning,

23 and a component of that is that you provide tools

24 and say create something. And so the students would

25 take it in different directions using the materials

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1 and the things that we discussed in the class. And

2 so there would be quite a difference in that, but we

3 tried to cover as much of, you know, the relevant

4 material as we could get through.

5   Q. So did that include teaching students how

6 to program a user interface with menus and buttons

7 and dropdowns and things such as that?

8   A. Menus specifically, I don't recall the

9 details of the course. It's a -- generally a

10 graphical user interface, so those elements are

11 likely to come up. But again, I don't recall all

12 the specific curriculum details.

13   Q. So those are likely to come up, you said?

14   A. User interface elements in general are

15 something that would likely come up.

16   Q. And what are user interface elements in

17 your professional experience for an Android app?

18   A. The components that make up the screens,

19 the buttons, the controls that are present.

20   Q. What components and buttons are you

21 referring to?

22   A. Just that a programmer, a developer could

23 place a button that had some functionality attached

24 to it.

25   Q. Explain what you mean by that.

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1   A. Well, a programmer can place elements from

2 the user interface onto the screens of an app and

3 then tie code to a user pressing that button.

4   Q. And what happens when a user presses a

5 button?

6   A. Well, depends on how you program it.

7   Q. All right. Well, let's use a -- let's use

8 a dropdown menu. What happens when a user presses

9 an option on a dropdown menu?

10   A. Well, that's what the programmer

11 determines through the code creation.

12   Q. All right. So what's the purpose of

13 having those buttons with functionality on a user

14 interface?

15   A. There are elements for the user to

16 interact with to perform some function.

17   Q. So let's step through how that happens.

18 Provide an example of how that happens.

19   MR. XU: Steve, I think we're over the

20 hour. So whenever we have a good time we can take a

21 break if you want.

22   MR. LISA: Sure. Let's get through this

23 little bit and we'll take a break, so five or ten

24 minutes and we'll stop.

25   Q. So you're an expert in and you've actually

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1 programmed Android applications yourself, correct?

2   A. That's correct.

3   Q. Okay. So you know what menu options there

4 are available in Android and in Apple and in other

5 environments, even web-based HTML and things like

6 that, correct?

7   A. I'm not sure the terminology that we're

8 using here. You're saying -- your question implies

9 that there are menus that are present in every

10 Android app and they have certain functionality, and

11 you can create an app that has no menu at all or no

12 buttons or anything like that. I'm a bit confused

13 by the question, I guess.

14   Q. You've programmed apps that have a user

15 interface with programming buttons having

16 functionality. Isn't that correct?

17   A. Yes.

18   Q. In fact, each your commercial websites

19 that you've identified in your various CVs have

20 exactly that, don't they?

21   A. Yes.

22   Q. Dropdown menus with the words options,

23 with buttons that follow, right?

24   A. Yes. Well, menu items.

25   Q. And it says menu options on your websites,

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1   right?

2   A. Okay. Yeah, if we want to use options.

3   Q. Well, let's use that as an example, all

4   right? Let's mark as Exhibit 10 -- what's next -- 9

5   and 9A some screenshots we've taken from your

6   websites, okay?

7   A. Okay.

8   Q. And while we're waiting for that to

9   happen, let's start with the wood framing website.

10   Did you program that yourself initially?

11   A. Hang on. I'm still waiting on --

12   Q. No, no, I'm just asking you in general.

13   Did you program the wood framing site that you

14   mention in your various background documents?

15   A. So it's based on a platform called Miva.

16   I wrote some code that interacts with Miva. I've

17   written code that interfaces various components and

18   ties in various APIs and so on.

19   So like most software, you know, not the

20   entire system, but I have, let's say, contributed to

21   the code that runs the site.

22   Q. The declarations you've filed in other

23   cases say that you actually were responsible for,

24   created and managed and brought that business to its

25   present state, right?

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1   A. Yes.

2   MR. XU: Objection.

3   Q. Okay. So you're actually materially

4 involved in supervising and directing how that wood

5 framing business and website operates, and that's

6 what you say in your declarations, correct?

7   A. So I have recently sold this business, but

8 as far as the development, the creation, yes, I was

9 materially involved.

10   Q. Let's look at, if you would, please,

11 Exhibit 9.

12   A. Okay. And if we could take a break when

13 you're done with this.

14   Q. Okay. That's fine. We can take a break.

15 Let's take a five-minute break and we'll be back.

16 Okay?

17   A. Sounds good.

18   (Recess from time   to time)

19 BY MR. LISA:

20   Q. Dr. Garlick, I've marked as Exhibit 9 a

21 screenshot of some of the pages from this website

22 Wordyisms. Are you familiar with that?

23   A. Yes.

24   Q. And why don't you explain again what your

25 involvement was in this.

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1   A. So this was my family's business. I set

2 up the e-commerce portion of the business, you know,

3 using some shopping cart software called Miva

4 merchant, and I developed the -- some of the code

5 that did some of the customization involved.

6 They're highly customizable products. And did some

7 of that code, did some of the user interface design

8 and managed the site after my mother retired.

9   Q. And so you recognize what you see in

10 Exhibit 9. Is that correct?

11   A. Yes.

12   Q. Okay. And as you said, the items were

13 highly customizable, right?

14   A. Yes.

15   Q. And I notice on your website that there

16 are a number of buttons and dropdown menus, right?

17   A. Yes.

18   Q. And you actually refer to them as options,

19 right?

20   A. I guess in regards to the frame that you

21 can choose, there are different options.

22   Q. And the text you can put in is custom,

23 correct?

24   A. Yes.

25   Q. All right. So you have buttons if you

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1 look at page 2 that you can -- a user can select to

2 select different text, right?

3   A. Yes, those are radio buttons for the font

4 I think you're referring to.

5   Q. And then there's -- those are called radio

6 buttons, right?

7   A. Yes.

8   Q. Okay. And then there's radio buttons for

9 mat color, right?

10   A. Yes.

11   Q. And for the frame and for acrylic,

12 correct?

13   A. Yes.

14   Q. And those are all referred to as options

15 by you, correct?

16   A. I guess above it says options in bold are

17 required.

18   Q. And example would be document direction,

19 orientation, you don't want the user to get it

20 wrong, right?

21   A. Right.

22   Q. Okay. So the -- what happens -- well,

23 sorry. Question -- strike that question.

24   Were you involved in laying this out at

25 all, originally?

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1   A. Yes.

2   Q. Okay. So what happens when a user selects

3 a radio button, for example, for document

4 orientation? There's two choices. What happens?

5   A. So when a user selects one or the other

6 option, a field is captured that collects that

7 information that is then collected as part of the

8 order process. So an order will see that either

9 horizontal or vertical has been chosen.

10   Q. How is a field captured?

11   A. So in this case, the element will have a

12 selected property attached to it. The code will go

13 in, see that, and then append to the order

14 information that's passed through the system, either

15 the word vertical or horizontal.

16   Q. So that's stored somewhere, that

17 selection, correct?

18   A. That's correct.

19   Q. And that selection then directs what is to

20 be the document orientation through the ordering

21 process, correct?

22   MR. XU: Objection, vague.

23   A. I'm sorry. The -- I didn't catch one of

24 the words. Did you say directs the -- could you

25 repeat the question?

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1   Q. It controls, it defines, it defines that

2   option, right?

3   A. It just appends a word to the options

4   field that is then passed along in an email to the

5   ordering system.

6   Q. Where is the options field in the code?

7   A. I don't know how to answer that question.

8   Q. You said that the field caption is --

9   trying to -- I don't have your testimony, so I

10   can't -- give me a second here as I go back and look

11   at what your answer was. You say the code will go

12   in is what your answer is -- you said so when a user

13   selects one or the other option, a field is

14   captured. Do you recall saying that?

15   A. Yes.

16   Q. What do you mean by a field is captured?

17   A. So, again, it's been quite a long time

18   since I've looked at the code here and I'm not sure

19   I'm going to be able to give you specifics on how

20   this particular feature is implemented. But in

21   general, that the user selection is marked and then

22   code recognizes that one of those options has been

23   chosen and appends a string, a text field, to I

24   believe it's an options array.

25   Again, I don't recall the specifics of

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1 this line of code, but that is then going to be

2 stored in a database as part of this order and

3 passed along in an order email that is received by

4 the people who actually build the frames.

5   Q. So where is that code?

6   A. I don't know what you mean by that

7 question.

8   Q. It says the user selection is marked and

9 then code recognizes that one of those options has

10 been chosen.

11   A. Uh-huh.

12   Q. What code?

13   A. Are you asking for like a file name or

14 where that code --

15   Q. Where is the code?

16   A. The code is residing -- where physically?

17   Q. You wrote the code, right?

18   A. Part of this -- some of this is part of

19 the Miva merchant system. Some of it was added on

20 by me, modified and so forth.

21   So the code is a file that exists on the

22 Miva servers.

23   Q. Thank you. Then you said that then this

24 is going to be stored in a database. What does that

25 mean?

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1   A. There's a database associated with the --

2   with the shopping cart system, and that database

3   stores order information, product information, all

4   sorts of things like that. And that -- these

5   options are attached to an order as part of an order

6   and stored in the database.

7   Q. Is it fair to say that the user selection

8   of an option is stored in a database in memory

9   somewhere?

10   MR. XU: Objection, vague.

11   A. I'm sorry. I didn't hear the objection.

12   MR. XU: Objection, vague.

13   A. Oh. Databases can be in memory. They're

14   also typically in fixed storage also. Can you

15   repeat the question?

16   Q. Dr. Garlick, you're the one who said the

17   database stores the user options. So what did you

18   mean by that?

19   A. I mean that this is a database table that

20   stores orders and as part of that data, the option

21   that is selected as part of the order is stored in

22   that database.

23   Q. And is it your testimony as an expert that

24   it's not stored in a memory somewhere?

25   A. Memory typically refers to the operating

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1   memory of a computer. Databases are typically more

2   permanent storage.

3   Q. So do you know where it's stored?

4   A. It's stored in the database which is going

5   to be in nonvolatile memory.

6   Q. Thank you.

7   A. It may also be in volatile memory,

8   depending on the implementation of the system,

9   caching and so forth. It's not a -- it's hard to

10   answer that question as asked.

11   Q. When the user moves on from document

12   orientation to custom text box, the document

13   orientation selection option is not lost, is it?

14   A. I don't recall where exactly all of these

15   things are stored. In other words, if you selected

16   documentation -- document orientation and then hit

17   the refresh button on a browser, it may revert to

18   the default setting.

19   Q. Okay. Is it your intent that the user has

20   to reselect everything, or is the normal operation

21   of this that once a selection is made, he moves --

22   he or she moves on to the next one?

23   A. That's -- that's -- that's the goal.

24   However, it's not always under your control because

25   the user can do things with their browser that can

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1 interfere with that process.

2   Q. But as you said previously, it's stored in

3 a memory somewhere and you move on to the next

4 selection, right, in general?

5   MR. XU: Objection, vague.

6   A. I don't know that I can put it in that

7 order because there is a submit button at the bottom

8 and I don't recall at what point the selection is

9 actually stored.

10   Q. Says in your document that options in bold

11 are required, correct?

12   A. I --

13   Q. On Exhibit 9.

14   A. I don't mean to interrupt here, but I saw

15 your lips moving before I heard sound and I want to

16 make sure I have the full question.

17   Q. Sure.

18   A. Okay.

19   Q. Question is, Exhibit 9 states, options in

20 bold are required, correct?

21   A. Yes, that's correct.

22   Q. All right. So a user would have to select

23 all required options and then hit submit if he's

24 following your direction, correct?

25   A. The bold options, yes. I believe there's

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1 a warning message that pops up if you haven't

2 selected a --

3   Q. Thank you. Yes. Right. So your intent

4 is that all of the user options in bold are required

5 and if they don't do that, you get a warning and the

6 order's not submitted, correct?

7   A. Upon pressing the add to cart button, I

8 believe, is when that warning message will occur. I

9 think I disagree with your ordering of the steps

10 here.

11   Q. Well, let's take them one at a time then.

12   A. Okay.

13   Q. The user presses a button for a document

14 orientation at some time in the ordering process,

15 and that option is stored in memory and used in the

16 ordering process, correct?

17   MR. XU: Objection, vague.

18   A. A user selects an option, and that option

19 is eventually stored as part of the order process.

20   Q. Then a user would -- or at some point the

21 user selects the custom text box, correct, by

22 selecting one of the radio buttons, correct?

23   A. Yes. They don't have to do it in a

24 certain order.

25   Q. Correct. I understand that. So he

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1 selects -- he or she selects by pressing or clicking

2 on, depending on whether it's a touch screen or a

3 computer, custom text form radio buttons and selects

4 that option, right?

5   A. Yes.

6   Q. And what happens then?

7   A. Well, it's up to the user.

8   Q. What happens at the program level when a

9 button is selected for the custom text box option?

10   A. The -- again, I don't recall the details

11 of this particular segment of code, but it's going

12 to mark a property of one of the radio options as

13 selected.

14   Q. And what does that result in happening?

15 What happens?

16   A. Then a circle is drawn within that -- next

17 to the selected font.

18   Q. And then what happens?

19   A. Then -- again, it's up to the user. They

20 can close the browser window. They can hit refresh.

21 They can --

22   Q. In the ordinary use of the business which

23 you started, Dr. Garlick, in which you intended this

24 form to be filled out, let's not look at exceptions.

25 Let's look at how you intended this system to

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1 operate. Okay?

2   A. Okay.

3   Q. All right. So these questions are pretty

4 direct and simple. All right? When a user selects

5 the custom text font option by pressing a radio

6 button, what does your system do?

7   MR. XU: Objection, vague.

8   A. I believe I answered that. It --

9   Q. Answer it again, please.

10   A. It draws a circle next to the selected

11 font and marks in the HTML that a radio button

12 attribute or one of the radio button options was

13 selected.

14   Q. And then what happens after the HTML marks

15 that?

16   A. This is event driven software, so it waits

17 for user input.

18   Q. All right. Then after all the rest of the

19 options are selected and submit is hit and selected,

20 what happens?

21   A. Then code will determine which options

22 have been selected. I believe this one has a field

23 where you can enter a custom text. So that text

24 will be collected and it will -- that information

25 will be stored in a database, stored in a memory

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1 object, and ultimately passed on through the order

2 system so that the people who build the frame can

3 know the options that were chosen.

4   Q. So is it fair to say that the information

5 that is passed on to those who build the system,

6 that they are instructed as to how to build the

7 frame based on those options?

8   MR. XU: Objection, vague.

9   A. They're provided with information that

10 lets them build the frame.

11   Q. You're a teacher and you instruct your

12 students, correct?

13   A. I believe that's a term that's used in

14 association with teaching.

15   Q. Is the data that's passed on to those who

16 complete the system, do those options instruct them

17 how to build the frame?

18   MR. XU: Objection, vague.

19   A. I -- I don't know about the terminology

20 here that -- it's data that's provided.

21   Q. And what happens with the data that's

22 provided? Who receives it?

23   A. So the production facility receives it.

24 They print it out and they build the frame according

25 to the -- to the data.

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1   Q. So they build the frame according to the

2 data, correct?

3   A. Yes. They'll have the size information,

4 the color information, so forth.

5   Q. So the options selected by the user is

6 converted to data that is provided to those who

7 build the frame, and it guides them how to build the

8 frame. Is that correct?

9   MR. XU: Objection, vague.

10   A. It's information that they use in order to

11 build the frame.

12   Q. Explain what you mean.

13   A. They have a general template for building

14 frames, and they need to know the mat color, the

15 size of the opening, things like that, and that

16 information is provided by the -- by the email.

17   Q. And it's your testimony that that does not

18 instruct them how to build a frame?

19   A. I don't know what term we want to use.

20 It's -- it's information that -- it's data points

21 that are used. It doesn't tell them how to assemble

22 a frame or something like that. It tells them --

23   Q. Does it tell them what orientation to put

24 the document?

25   A. It tells them how to cut the opening based

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ROUGH DRAFT   74

1 on which size is larger or which side is wider.

2   Q. Does it tell them which color frame mat to

3 use, mat to use?

4   A. Yes.

5   Q. Does it tell them what frame to use?

6   A. Yes.

7   Q. Does it tell them which font to use?

8   A. Yes.

9   Q. And does it tell them which document

10 orientation to cut the material?

11   A. Yes.

12   Q. All right. So it is a simple fact that

13 the options selected by the user inform, guide, and

14 tell those that create the frame how to do it in

15 accordance with the order.

16   A. The instruction for building a frame is

17 their knowledge of how to assemble frames.

18   Q. Dr. Garlick, I withdraw the question.

19 We're going to ask it again. We're going to ask it

20 again simply. When the user submits the order, the

21 order informs the person who completes it which

22 document orientation to use, correct?

23   A. The information informs them -- I would

24 say it's the email that informs them.

25   Q. All right. So is it your testimony that

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1   when a user selects the radio button for document

2   and orientation, he is not informing the system

3   which orientation for the document to use?

4   A. The user is informing the system of which

5   orientation they would like.

6   Q. Thank you. And is the user informing the

7   system which text font to use?

8   A. Yes, I would say, would say so.

9   Q. And the user selection of the options for

10 mat color will inform the system and guide the

11 system as to which color to use, right?

12   A. The -- I'm sorry. Could you repeat it?

13   THE REPORTER: Question: "And the user

14 selection of the options for mat color will inform

15 the system and guide the system as to which color to

16 use, right?"

17   A. The user selection will guide -- the user

18 decides which mat color they want by selecting one

19 of those options.

20   Q. And that selection of the user option

21 instructs the system which color to use, correct?

22   MR. XU: Objection, vague.

23   A. The user is informing the system of which

24 mat color they would like.

25   Q. And how does he do that?

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1   A. By selecting one of them.

2   Q. And the user selects one of the options

3 for frame to inform the system which frame to use,

4 right?

5   A. The user -- the user decides which frame

6 they want. They make a selection, and the user

7 tells the system which frame they want.

8   Q. Well, what tells the system is the

9 selection of the radio button, correct?

10   A. I would say it's the user selecting one of

11 them.

12   Q. All right. So the user selecting one of

13 the radio buttons informs the system as to which

14 frame to use?

15   A. I suppose so. I don't know. We're

16 getting really out there on --

17   Q. Dr. Garlick, you're an expert on this,

18 okay? So if anybody's out there, it's me, all

19 right? I mean, you're the one who knows how this

20 stuff operates. So if you don't understand a

21 question, just tell me and I'll do my best to

22 rephrase it. So I'll start again.

23   The user selection of the option for a

24 frame informs the system which frame to use,

25 correct?

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ROUGH DRAFT   77

1   A. The user informs the people building the

2   frame of which one they want by selecting a frame.

3   Q. Dr. Garlick, I had asked you to answer my

4   question yes or no or tell me if you don't

5   understand. Okay? So let's try this again.

6   MR. XU: Objection. The witness can

7   choose -- can answer whatever he thinks the right

8   answer it.

9   MR. LISA: Actually, not so, Mr. Xu and

10 that's not objection. The witness is supposed to

11 answer fairly yes or no a question that calls for a

12 yes or no answer. And if he doesn't understand

13 that, then he can let me know that.

14   Q. So Dr. Garlick, we're going to try it

15 again.

16   A. I'll do my best.

17   Q. And if you don't under -- if you can't

18 answer the question, simply ask me to rephrase it.

19   A. I will.

20   Q. All right? So the user selection of an

21 option for the frame instructs the system which

22 frame to use, correct?

23   A. The user instructs through the frame

24 selection. So I guess the answer to your question

25 is no because I disagree with the phrasing of it.

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1   Q. Which part do you disagree?

2   A. That it is -- that it is -- it feels like

3 you're taking the user out of the process here. It

4 is the user choosing one of these frames, and that

5 data is then passed along and the user has informed

6 the people building the frame of which frame they

7 want based on that selection. I don't know that I

8 have a further answer for this.

9   Q. Well, then we'll try a different question.

10   You call the various radio buttons below

11 options, correct? So you have no objection to me

12 calling them options, do you?

13   A. No, no objection.

14   Q. And the user selects an option by either

15 clicking on, if it's a computer, or pressing on if

16 it's a phone, the radio button, correct?

17   A. The user selects one of those by clicking

18 or pressing, yes.

19   Q. Okay. So we can agree that the user

20 selects one of the options by either clicking or

21 pressing on the radio button, correct?

22   A. The user select -- I think that was the

23 same question.

24   Q. Actually I put two parts together. Can

25 you repeat the question, Ms. Shelton?

ROUGH DRAFT   79

1   THE REPORTER: Question: "So we can agree

2   that the user selects one of the options by either

3   clicking or pressing on the radio button, correct?"

4   MR. XU: Objection, vague.

5   Q. Yes or no?

6   A. Yes.

7   MR. XU: The witness can choose his

8   answer.

9   A. Yes, the user chooses their option by

10 clicking or pressing on one of the selections.

11   Q. And when the user selects his option by

12 pressing or clicking on one of the radio buttons,

13 that results in the system being informed as to how

14 to -- strike the question.

15   Could you repeat his answer, please?

16   THE REPORTER: Answer: "Yes, the user

17 chooses their option by clicking or pressing on one

18 of the selections."

19   Q. And what happens after that?

20   A. This is what we've gone over before. I

21 have the same answers that I had before.

22   Q. It instructs the system how the user wants

23 the frame built, correct?

24   MR. XU: Objection, vague.

25   A. I feel like that's -- that's not what I

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1 said before.

2   Q. I'm asking you if that's correct.

3   A. I feel like I've answered this question

4 several times now.

5   MR. LISA: I'm asking if what I just told

6 you, which is not the same as what you've answered

7 previously, so I'm asking Ms. Shelton to repeat the

8 question again.

9   THE REPORTER: Question: "It instructs

10 the system how the user wants the frame built,

11 correct?"

12   MR. XU: Objection. Same objection.

13   A. It's data that's stored in a database.

14   Q. Let's stop it again. I'm asking a

15 question. If the answer's no, if in your expert

16 opinion the answer is no, feel free to say no.

17 Okay?

18   The question is, that instructs the system

19 how the user wants the frame built, yes or no?

20   MR. XU: Same objection. And the witness

21 can answer --

22   MR. LISA: You've made your objection.

23   MR. XU: The witness can use his own words

24 to answer.

25   Q. Answer the question, Dr. Garlick.

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ROUGH DRAFT   81

1   A. I'm sorry. When you turn your head, the

2   audio goes out. I apologize.

3   Q. The selection of the option instructs the

4   system how the user wants the frame built, correct?

5   MR. XU: Same objection.

6   A. I don't think an option does the

7   instruction, does instructions. It's a piece of

8   data. So, no is the answer.

9   Q. So in your professional opinion, when the

10 user selects an option as required by your system

11 and the options are submitted, it does not instruct

12 the system how to build the frame?

13   MR. XU: Objection, vague.

14   A. When -- a user's selection is used -- is

15 stored by the system and is used by the production

16 facility to pick a mat color. I --

17   Q. Which is part of building the frame,

18 correct?

19   A. Yes.

20   Q. You agree that it's reasonable to refer to

21 the radio buttons on the screen that are selected by

22 the user as user options, correct?

23   A. I feel like I've answered the question

24 about these being options three times now.

25   Q. I'm asking a different question. Do you

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ROUGH DRAFT   82

1 agree that it's fair for people skilled in this art

2 to refer to the various radio buttons shown on

3 Exhibit 9 as user options?

4   A. Well, we covered that the options in bold

5 are required. These are options, the user selects

6 them, so yes, a user option.

7   Q. Thank you. Look at Exhibit 9A, please.

8   A. Let's see. Okay. 9A. All right.

9   Q. Do you recognize those screenshots?

10   A. I do, yes.

11   Q. Can you explain what you see, please.

12   A. This looks like a screen capture from a

13 mobile device of the TV frame website.

14   Q. What is the TV frame website?

15   A. Source TV frames.com.

16   Q. And what is that?

17   A. That is a site that I spun off, I guess,

18 from the diploma framing business to frame

19 televisions.

20   Q. And do you recognize that, again, you have

21 the ability for users to select options through

22 various menus or buttons?

23   A. Yes. The users choose a size for their TV

24 and mat color and frame option.

25   Q. So again, in this different example, it's

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1 the user who selects options and those options guide

2 or direct the system what they're ordering, correct?

3   MR. XU: Objection, vague.

4   A. The user selects options and it's similar

5 to the last site. The data is stored associated

6 with those user options and collected in an email

7 that's sent to production.

8   Q. For what purpose?

9   A. For -- for knowing which options the user

10 has chosen so that that fabric can be pulled off the

11 shelf.

12   Q. Okay. Is data stored as a result of those

13 selections by the user?

14   A. Yes.

15   Q. Now, in your declaration, Exhibit 2, you

16 refer to what you believe a person having an

17 ordinary skill in the art would be. Is that

18 correct?

19   A. Yes.

20   Q. Let's turn to that if you would.

21 Specifically it's paragraph 37, I believe, of

22 Exhibit 2.

23   A. Yes. Okay. I'm there.

24   Q. All right. And you say there that you

25 believe a person of ordinary skill in the art for

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1 the '761 patent and the '472 patent as of

2 October 17, 2005, would have a bachelor's degree in

3 computer science, computer engineering, electrical

4 engineering, or other similar degrees, and two years

5 of experience in wireless client/server data

6 transmissions. And you add that more work

7 experience can compensate for less education and

8 vice versa, correct?

9   A. That's correct.

10   Q. So someone who took a bachelor's degree in

11 computer science, can you give me an idea of what

12 level of coursework they would have in the field

13 that you've assigned for the person having ordinary

14 skill in the art here.

15   A. I'm sorry. I'm not sure that I understood

16 your question. Were you saying that I had a

17 bachelor's in computer science?

18   Q. No, no, no.

19   A. Okay.

20   Q. You assigned -- I've asked you what

21 level -- I'll ask it again.

22   What level of coursework would a person

23 having ordinary skill in the art have if they had a

24 bachelor's degree in computer science?

25   A. Well, I would say that a common

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1   curriculum, and this is going to vary from school to

2   school, but a common curriculum for a bachelor's

3   degree in computer science is going to involve some

4   programming courses, some computer networking

5   courses, algorithms, algorithm analysis, some

6   hardware courses would be involved also, computer

7   architecture, sort of the fundamentals of a computer

8   science degree.

9   Q. And would -- as part of that, would they

10   have probably done some lab courses and setting up

11   computers or controllers or microprocessors and

12   programming them?

13   A. Perhaps.

14   Q. Do you think it would be if you're getting

15   a bachelor's of science degree in computer science

16   required that you take lab courses that involve

17   programming?

18   A. I would say that would be very common

19   among the computer science curricula that I have

20   reviewed.

21   Q. All right. I'd like to mark as Exhibit 10

22   a document titled computer processor history. So a

23   person having ordinary skill in the art as of the

24   time that you've identified, do you have an

25   understanding of which of the common microprocessors

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1 they would have worked with at that time?

2   MR. XU: Objection, vague.

3   A. So we're talking about -- I'm not sure I

4 understand. You reference a time period and -- I

5 think I'm going to need some clarification on the

6 question.

7   Q. Sure. You've identified the person of

8 ordinary skill in the art as of October 17th, 2005,

9 as a bachelor's degree in computer science with two

10 years of work experience, right?

11   A. Yes.

12   Q. I'm asking, what would a person of

13 ordinary skill in the art have worked with by way of

14 microprocessors at that time?

15   A. So, much of the coursework involved in

16 computer science is not going to be processor

17 specific. In other words, we're talking about

18 programming in C or Java or something like that.

19 Well, C at the time. And that would not be tied to

20 a certain architecture.

21   Q. So I asked a different question though. A

22 person having ordinary skill in the art is actually

23 in the field for two years, you said, right?

24   A. A person of ordinary skill in the art

25 would have -- I need to go back and reference it

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1 again, but --

2   Q. With a bachelor's degree and two years of

3 experience.

4   A. And more school can substitute for

5 experience.

6   Q. Right, right. So this question I've

7 directed to the person having ordinary skill in the

8 art, and that is, as you understand that, what

9 computer processors would they have been working

10 with at that time?

11   A. I don't know that I can recall the model

12 numbers of processors from certain times. They're

13 going to be Motorola processors. The 68,000 series

14 comes to mind. I don't know -- I don't recall if

15 that's the right time frame, but yeah, I don't know

16 that I can correlate processor model numbers with

17 years.

18   Q. Why don't you refer to exhibit --

19 plaintiff's Exhibit 10 and see if that refreshes

20 your recollection at all. And in particular, are

21 you familiar with or have you worked with any of

22 those in the period around October 17, 2005?

23   A. So I see from 2003 and 2004 and '5, we

24 have the AMDs, the Intel, the Pentium line and so

25 forth. I had those processors in machines that I

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1 owned. But again, from a -- if we're talking about

2 a coursework perspective.

3   Q. We're not?

4   A. C programming is not --

5   Q. We're not. I've asked a specific

6 question.

7   A. Okay.

8   Q. Which of those do you recall having worked

9 with?

10   A. I recall having Pentium machines. I don't

11 recall which iteration of that architecture or that

12 product. I also had some AMD processors in machines

13 that I worked with. So that's the best of my

14 recollection.

15   Q. So would you agree that the processors

16 prior to 2006 would have been well known to those of

17 ordinary skill in the art as you've defined that

18 person?

19   MR. XU: Objection, vague.

20   A. That the -- could you repeat the question?

21   Q. Can you repeat the question, please,

22 Ms. Shelton.

23   THE REPORTER: Question: "So would you

24 agree that the processors prior to 2006 would have

25 been well known to those of ordinary skill in the

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1 art as you've defined that person?"

2   MR. XU: Same objection.

3   A. I believe a person of ordinary skill in

4 the art would -- would have used some of these

5 processors. I -- I don't know that it would have

6 come in from computer science coursework

7 necessarily.

8   Q. The person having ordinary skill in the

9 art as you've defined them has coursework and work

10 experience, correct?

11   A. They could have both, either or.

12   Q. Well, it says and two years of experience,

13 more work experience can compensate for less

14 education and vice versa. But as I understand it,

15 your definition of a person having ordinary skill in

16 the art does not include no work experience.

17   A. No, I think it's written more education

18 could substitute for work experience.

19   Q. So in your view, a person of ordinary

20 skill in the art could have no experience in the

21 field working?

22   A. I think that more school could substitute

23 for work experience, that's correct.

24   Q. And it's your testimony that a person

25 having ordinary skill in the art would have worked

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1 with some of the microprocessors listed on

2 Exhibit 10 prior to 2006?

3   A. Yes, I think that in a desktop environment

4 that these listed model numbers were in use and may

5 have been familiar to someone.

6   Q. And do you agree that those model numbers

7 listed on Exhibit 10 refer to specific

8 microprocessor devices?

9   A. Yes.

10   Q. And those are in fact structures, right?

11   MR. XU: Objection, vague.

12   A. I don't know what you mean by that.

13   Q. Well, taking, for example, if you look at

14 page 4 of Exhibit 10, and let's refer to the Athlon

15 64 X2 3800 plus, a couple up from the bottom. Do

16 you see that?

17   A. We're looking at.

18   Q. 2005?

19   A. 2005.

20   Q. 2005, correct. So if you look at the

21 entry for 2005 for the AMD product identified there,

22 you would agree that that identifies a specific

23 microprocessor, correct?

24   A. Yes.

25   Q. And you'd consider that to be a specific

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1 structure, correct?

2   MR. XU: Objection, vague.

3   A. I don't -- I don't know what you mean by

4 structure.

5   Q. So what do you understand a structure to

6 be?

7   A. When I hear that word, I think of a

8 building.

9   Q. All right. So a computer is not a

10 structure?

11   A. I don't believe this is a term that's in

12 general use in the --

13   Q. Well, how would --

14   A. I don't have any context to give meaning

15 to this word.

16   Q. Well, it's a specific chip set then. Is

17 that fair to say?

18   A. We're mixing terminology here that doesn't

19 necessarily follow. Chip set can refer to chips

20 external to the processor and so on. I can't give a

21 good answer as that's worded.

22   Q. Is it -- is the Athlon 64 X2 AMD product

23 referenced at 2005 on Exhibit 10 a specific product?

24   A. Specific product. Yes.

25   Q. It's a thing that exists in reality,

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1 right?

2   A. Yes.

3   Q. You can order it, right?

4   A. You could order that model number, yes.

5   Q. And a person -- a person having ordinary

6 skill in the art being told what the Athlon 64 X2

7 3800 plus is would have no difficulty understanding

8 what it is, correct?

9   A. That's correct. There would probably be

10 variations of that in terms of clock speed, cache,

11 memory and so forth.

12   Q. But they wouldn't be left to guess. They

13 would understand what it is, correct?

14   A. I would think so.

15   Q. And would you agree that what's referenced

16 on that exhibit for the date 2005, the Athlon 64 X2

17 3800 plus, can be fairly characterized as a

18 particular hardware device?

19   A. I would categorize this as hardware.

20   MR. LISA: Turning to -- why don't we take

21 a short five-minute break because we're going to

22 turn to a new subject now if that's okay?

23   MR. XU: Sure.

24   MR. LISA: And then -- or do you want to

25 break for lunch.

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1   MR. XU: What time is it for you there?

2   MR. LISA: I'd like -- it's 12:00 but it's

3 earlier for I think Dr. Garlick, right?

4   THE WITNESS: Oh, it's 12:00 here also.

5   MR. LISA: Why don't we then -- what I'd

6 like to do is go about -- either take a break now or

7 take it in a half hour. What's your preference,

8 Dr. Garlick? I'm good to go if you still want to

9 go, but I'm turning to a new subject.

10   THE WITNESS: Well, if we're turning to a

11 new subject, why don't we take a lunch break and we

12 can come back and take a lunch break now and come

13 back. Is that -- if that works.

14   (Recess from 12:00 to time   )

15 BY MR. LISA:

16   Q. Quick question. Dr. Garlick, did you

17 confer with counsel during the break?

18   A. I did.

19   Q. And did you review your prior testimony

20 with counsel?

21   A. We just -- we just talked generally about,

22 you know, that we thought the deposition may go

23 longer than anticipated and so forth. So just

24 general discussion like that.

25   Q. Okay. All right. I'd like to mark as

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1 Exhibit 11 a data book for a speech recognition

2 processor so I'm going to put that in front of you.

3 So you should have Tab 11 handy now I think if

4 everything is working right, Exhibit 11.

5   A. I see that. I see Exhibit 11.

6   Q. Exhibit 11 is the computer processor

7 history. No, that's 10. Okay. PX11. It's a

8 bigger document. It might take a minute to load.

9   So Exhibit 11, RSC-164 data book, are you

10 able to open that?

11   A. Yes, I see that.

12   Q. So Dr. Garlick, Exhibit 11 is a data book

13 for an RSC-164 and RSC-164i, speech recognition IC.

14 Have you ever heard of that product before?

15   A. I have not.

16   Q. If you'll look at page 3 of the data book,

17 it says August -- revision 2.5 August 1996. Do you

18 see that?

19   A. I do, yes, on page 3.

20   Q. All right. And if you would, I'd ask you

21 to just take a second, a minute, and perhaps the

22 best way to do this is to go to the first page and

23 the general description and just read through the

24 first four paragraphs there.

25   A. Okay. Give me a minute here. Okay.

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1   Q. All right. Great. You've been through

2   that. Thank you. If you would just cursor down now

3   to table of contents, and I'm not going to obviously

4   go through this entire book, but I just want to get

5   you to see there's a feel for what's included in the

6   data book.

7   On page 1 of it, there was a reference to

8   a soft -- an RSC development kit that allows

9   development to create custom applications. Are you

10 aware of there being like software and hardware

11 development kits available to those of ordinary

12 skill in the art at the time?

13   A. Yes. I would think that a particular

14 piece of hardware might come with some software to

15 assist in developing on that platform.

16   Q. And that was relatively common back prior

17 to 2006, particularly for the main line hardware

18 processors, right?

19   A. So this seems to be a more specialized

20 device as opposed to some of the processors that we

21 looked at in the prior exhibit. So I don't know

22 that we can draw a parallel between those.

23   Q. Right. That's why I asked separate. So

24 I'll ask it again separately.

25   A. Okay.

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ROUGH DRAFT   96

1   Q. So the -- prior to 2006, it was relatively

2 common for the manufacturers to provide development

3 kits for their various processors and controllers,

4 right?

5   MR. XU: Objection, vague.

6   A. I would say that that happened in some

7 circumstances.

8   Q. What circumstances are you aware of at or

9 about that time?

10   A. Just the -- whether or not the

11 manufacturer provided them.

12   Q. What was the purpose of these development

13 kits?

14   A. To make it easier on a software developer

15 to create software for that specific device.

16   Q. It appears this particular device had a

17 development kit that allows developers to create

18 custom applications for the RSC chips, right?

19   A. Can you point me to where you reference

20 that in the --

21   Q. Second paragraph, page 1 of Exhibit 11.

22   A. Okay. That references an RSC development

23 kit, yes.

24   Q. Okay. Thank you. Would you please refer

25 now to page 5 of the PDF which is page 1 of the --

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ROUGH DRAFT   97

1   it says page 1 on the manual, but it's page 5 of the

2   PDF.

3   A. Okay. I'm there.

4   Q. All right. And if you look at the first

5   paragraph there, it says the RSC164 is the first in

6   a family of high performance 8-bit microprocessors

7   featuring a high level of integration targeted to

8   high accuracy, low cost speech recognition

9   applications. Do you see that?

10   A. I do.

11   Q. All right. And if you look at the very

12 next page, the RSC-164 architecture, there is a

13 block diagram there showing the architecture, right?

14   A. It says a block diagram. I would --

15 again, it's the first time I've seen this document.

16 I don't know that I can characterize --

17   Q. Let me ask it differently. Under a

18 heading number 2, RSC-164 architecture, there is a

19 figure 1 block diagram, correct?

20   A. Yes.

21   Q. And then there's description down below of

22 the fact that it's an 8-bit RISC microprocessor, has

23 on chip ROM, A to D converters. Do you see that?

24   A. Sorry.

25   Q. Right below the heading.

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ROUGH DRAFT   98

1   A. Okay. 8-bit microprocessor -- yes, I do.

2   Q. So you would agree that this is in fact a

3 specific microprocessor that would have been

4 available at least to those of ordinary skill in the

5 art in 2006 based on what are you're looking at,

6 correct?

7   A. I don't know that we can -- they describe

8 it as a microprocessor. Some might describe it as a

9 controller. They have the word processor in there.

10 This is a specific device, yes.

11   Q. It's an actual apparatus, right?

12   A. I haven't seen any information that this

13 was in production. This appears to be the manual

14 for something. I don't know if it was produced or

15 not.

16   Q. Well, if it -- if you assume it was

17 produced, it would be a specific device, right?

18   A. This --

19   Q. Let me rephrase that differently.

20   I'm going to ask you to assume

21 hypothetically that the RSC-164 was in fact

22 manufactured and sold by sensory, the manufacturer

23 listed on page 2, prior to 2006. Can you make that

24 assumption for a hypothetical?

25   A. Yes.

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ROUGH DRAFT   99

1   Q. And that these manuals also, this manual,

2   Exhibit 11, was also available prior to 2006. Okay?

3   So as an expert who's offered opinions in this case

4   on what the person having ordinary skill in the art

5   would know, would you agree that a person having

6   ordinary skill in the art in or about 2006

7   theoretically would be aware of the RSC-164 and its

8   related literature like this data book?

9   MR. XU: Objection, vague.

10   A. You're asking if a person of ordinary

11 skill would be familiar with this specific device,

12 and I don't -- this is a specialized piece of

13 hardware and I don't know that we could assume that

14 every POSITA would be familiar with this hardware.

15   Q. Do you know whether a person having

16 ordinary skill in the art is theoretically aware of

17 all related literature as if it's hanging on a wall,

18 so to speak? Have you seen that before as a

19 requirement?

20   A. I'm not sure I understand the question.

21   Q. Let me ask it differently.

22   A. Okay.

23   Q. You're -- if I understand your response,

24 your concern is that a person having ordinary skill

25 in the art as it relates to Mr. Konicek's invention

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ROUGH DRAFT   100

1   may not have been aware of this. Is that your

2   point?

3   A. May not have been aware of this hardware,

4   yes.

5   Q. Is that your point, yes?

6   A. It is.

7   Q. Yes. The answer was yes. Okay.

8   A. I'm answering yes to the question that a

9   person of ordinary skill in the art may not have

10   been aware of this particular -- of this hardware.

11   Q. But regardless of whether the person of

12   ordinary skill in the art is aware of this hardware,

13   you would agree that what appears to be disclosed in

14   Exhibit 11 is a specific hardware microprocessor

15   that was available prior to 2006?

16   A. If we make the assumption that the RSC-164

17   and RSC-164i were actually produced pieces of

18   hardware as we've discussed, then I would consider

19   those to be specific hardware, yes. In general, it

20   describes this as containing an 8-bit RISC

21   microprocessor which is more of a general term. It

22   doesn't describe what specifically that piece of

23   hardware is.

24   Q. It does say -- well, let me skip that.

25   I'd like to mark as Exhibit 11A another document

ROUGH DRAFT   101

1   entitled RSC-164i. So it's -- it should show up

2   here pretty quickly, Dr. Garlick. It's 11A. All

3   right. That should be there?

4   A. All right.

5   Q. So I've marked as Exhibit 11A a shorter

6   five-page data sheet for the RSC-164i. Have you

7   ever seen this before?

8   A. I have not.

9   Q. Here it refers to it as a general purpose

10 microcontroller. Do you see that?

11   A. I do, yes.

12   Q. And the -- if you read below the general

13 description, it says the RSC-164i from the

14 interactive speech family of are products is a low

15 cost microcontroller designed for use in consumer

16 electronics. Do you see that?

17   A. Yes.

18   Q. Do you think a person having ordinary

19 skill in the art at the time who was working in

20 speech communications, I'm sorry, speech recognition

21 in consumer electronics would have been aware of

22 this?

23   A. I'm not sure what you mean. Aware of this

24 document?

25   Q. Aware of this document or -- yeah, you can

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ROUGH DRAFT   102

1 start there.

2   A. If they were involved in a related field,

3 perhaps. For a general practitioner, I would say

4 probably not.

5   Q. How about somebody building a device

6 that's described in the Konicek patent

7 specification? Would they be aware, the person of

8 ordinary skill in the art, as the court is supposed

9 to apply, of a product like the RSC-164i?

10   MR. XU: Objection, vague.

11   A. Perhaps.

12   Q. And you've never -- you weren't aware of

13 this device prior to today, right?

14   A. That's correct.

15   Q. If we turn to your declaration, Exhibit 2,

16 and in particular at paragraph 41.

17   A. Okay.

18   Q. You state in paragraph 41, figure 3 of the

19 patents-in-suit depicts a, quote, camera controller

20 40, close quote, as an empty box and a specification

21 does not provide any detail regarding the structure

22 and composition of the, quote, camera controller,

23 close quote, other than to say it's preferably a

24 microprocessor.

25   Do you see that?

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ROUGH DRAFT   103

1   A. Yes.

2   Q. And why did you make that statement?

3   A. I was looking for explanation of claim

4 constructions, and I looked to the diagram and to

5 the specification and that's what I found in

6 reference to a camera controller.

7   Q. Well, why does that matter to your

8 opinion?

9   A. Well, in looking for that information, I

10 did notice that the specification described it as

11 preferably a microprocessor.

12   Q. Well, in your view that's not sufficient

13 to identify a particular piece of hardware or that

14 the microprocessor is a hardware device?

15   A. Well, I was looking for the explanation of

16 what this is because it is described largely in

17 terms of functionality. And I was looking to see if

18 there was, in context of controlling, a flow chart,

19 a piece of pseudocode, something like that that

20 would instruct how the camera controller was

21 controlling.

22   Q. In paragraph 39, you're refer -- you state

23 that you under -- I understand that a limitation of

24 patent claim can be expressed as a means for

25 performing a function.

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ROUGH DRAFT   104

1   So is it your testimony that the reference

2 to a camera controller in the claim is a means word?

3   A. That was my instruction for analysis from

4 Mr. Xu.

5   Q. Is it -- so that was -- you were told to

6 assume that a controller was a functional -- was a

7 means language term, a nonce word, N-O-N-C-E. Have

8 you heard that before?

9   A. In computer science terms. I don't

10 believe in legal terms.

11   Q. Explain your answer. I'm sorry.

12   A. In computer science terms, that can refer

13 to a number used once. I'm sure it has a different

14 legal meaning.

15   Q. Your declaration doesn't state that you

16 were told to assume that a controller was equivalent

17 to a means?

18   A. I was asked to analyze the term in that

19 framework.

20   Q. Where in your declaration does it say

21 that?

22   A. That is also my opinion that this word

23 controller is a -- basically a placeholder. You can

24 substitute the word "thing" for it. And so I was

25 asked to interpret this in that framework, and

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ROUGH DRAFT   105

1   that's what I did.

2   Q. Did you make any effort to confirm whether

3   that instruction was reasonable or not?

4   A. It's reasonable to me.

5   Q. Why is it reasonable to you?

6   A. Because from my understanding of the law

7   based on what I've written here, controller is a --

8   is a means for doing something. The specification

9   describes its functionality in terms of operations

10   that are performed, and so as I said previously,

11   that's what I looked for in the specification and

12   this -- this is my opinion, that this is a -- from

13   my understanding of a means plus function term, that

14   this is how that should be applied.

15   Q. What is the basis for that understanding?

16   A. The information here that I've presented

17   in paragraph 39.

18   Q. Is that your testimony, that a controller

19   is the equivalent as to a means?

20   A. From the understanding that I've presented

21   in paragraph 39. And from my knowledge and from my

22   review of the patent, the term controller is very

23   generic and it is described in terms of its

24   functionality. And that's how I was asked to

25   interpret the claim. That's how I interpreted the

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ROUGH DRAFT   106

1 term. And I believe that to be the correct

2 interpretation based on my understanding of the law.

3   Q. Paragraph 39 doesn't mention the word

4 controller anywhere.

5   A. Well, this is under the section of

6 controller right above it, Section A.

7   Q. So what about microprocessor? Do you

8 believe a microprocessor is a generic term in terms

9 of ordinary skill in the art?

10   A. It's going to depend on the context. So,

11 you know, previously you presented a specific AMD

12 device, but if we just say controller or processor

13 and those can be different things, those are

14 generally regarded as -- or potentially meaning two

15 different things, and -- I'm sorry. Can you repeat

16 the question?

17   Q. Sure. Ms. Shelton, could you repeat the

18 question for Dr. Garlick, please.

19   THE REPORTER: Question: "So what about

20 microprocessor? Do you believe a microprocessor is

21 a generic term in terms of ordinary skill in the

22 art?"

23   A. Again, I believe it depends on the

24 context.

25   Q. You made a statement that you said

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ROUGH DRAFT   107

1 previously you presented a specific AMD device. So

2 is it your testimony that unless you identify a

3 specific device that it's going to be --

4 microprocessor as a term would be construed

5 generically?

6   MR. XU: Objection, vague.

7   A. It's going to depend on the context in

8 which it's used.

9   Q. Well, what if you actually -- what if a

10 user actually identifies a specific device like the

11 AMD device in your prior answer?

12   A. I don't know that just giving a model

13 number is going to clarify that. And from my

14 understanding as put in paragraph 39, when something

15 is just described in terms of what it does, then you

16 could substitute the word "thing" in there or -- and

17 in that context it's used generically.

18   I'm sure there are contexts where things

19 could be described in terms of a flow chart, an

20 algorithm, a pseudocode that would describe how

21 things are controlled.

22   Q. If the patent claim that you analyzed had

23 said a AMD processor by model number that was

24 configured to do the operations recited thereafter

25 in the claims, would that make a difference to you,

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ROUGH DRAFT   108

1 any difference at all?

2   A. Well, as I answered before, I don't think

3 that just inserting a model number is what is needed

4 here. I think it's needed to describe it by

5 something other than what it performs. The

6 functions or the outcome of this wouldn't tell a

7 POSITA how it was implemented.

8   Q. Did you base your opinion here on the

9 conclusion, at least in part, that Mr. Konicek did

10 not identify a particular processor?

11   MR. XU: Objection, vague.

12   A. Again, I don't think this is model number

13 specific.

14   Q. You complained in your patent -- in your

15 declaration that he did not provide any detail

16 regarding the structure and composition of the

17 camera controller other than to say it's preferably

18 a microprocessor. You said that, right?

19   A. Yes.

20   Q. Why did you say that?

21   A. Because, as I said before, I was looking

22 for some description of how this was done other than

23 just the results, and that's what I found. I wanted

24 to include it for completeness. And -- but there --

25 like I said, there wasn't a flow chart, pseudocode.

ROUGH DRAFT   109

1   Q. That statement refers to specifically that

2 the specification does not provide any detail

3 regarding the structure and composition of the

4 camera controller other than to say it's preferably

5 a microprocessor. Says nothing about code,

6 pseudocode, flow charts, nothing.

7   A. I believe I describe that later. Let's

8 see.

9   Q. I'm not talking about later. I'm talking

10 about that particular sentence, Dr. Garlick.

11   A. Okay.

12   Q. You referred in that sentence to the

13 absence of any detail regarding the structure and

14 composition of the camera controller, right?

15   A. Let me go back to where we are here.

16 Okay.

17   Q. Do you see it?

18   A. We're talking about the first sentence in

19 paragraph 41?

20   Q. Paragraph 41, first sentence, correct.

21   A. Okay. I see that sentence.

22   Q. So you in fact considered it relevant to

23 your opinion that the specification does not provide

24 any detail regarding the structure and composition

25 of the camera controller other than to say it's

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ROUGH DRAFT   110

1   preferably a microprocessor, correct?

2   A. That's my -- that's my statement there.

3   Q. You believe your statement, don't you?

4   A. Yes.

5   Q. It's accurate and true, isn't it?

6   A. I believe so, yes.

7   Q. And you relied on the fact that the

8   specification does not provide any detail regarding

9   the structure and composition of the camera

10   controller other than to say it's preferably a

11   microprocessor in forming your opinions, right?

12   A. That's -- that's correct. I -- like I

13   say, I was looking for details.

14   Q. That's fine. You said that's okay.

15   That's -- that's all I called for. By the way, you

16   used the word structure there. Do you see that?

17   A. Yes.

18   Q. Before you said when I used the word

19   structure you think only of a house. Is that really

20   what you meant here?

21   A. No, I did not mean house here.

22   Q. All right. What did you mean by

23   structure?

24   A. In this context?

25   Q. Yes.

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ROUGH DRAFT   111

1   A. The -- the details of how a controller

2   controls, how does it accomplish its task other than

3   to just describe the outcome.

4   Q. So in your view, structure and composition

5   is software?

6   A. Not necessarily. Just -- it could be

7   pseudocode. It could be a flow chart. It could be

8   an algorithmic description.

9   Q. Can it be a physical structure?

10   A. If that helped to clarify how the

11   operations are performed.

12   Q. Well, were you instructed on what

13   paragraph 112, paragraph 6 states regarding

14   construing claims as means plus function language?

15   A. With regard to what's presented in

16   paragraph 39 and later, that's -- that's what I

17   based my opinion on.

18   Q. I asked specifically whether you have an

19   understanding of what paragraph 112-6 of the patent

20   code requires for claims to be construed as a 112-6

21   means plus function term.

22   A. That seems to be a legal question. I'm

23   not an attorney. I'm not expressing an opinion on

24   the law. I'm -- I'm expressing an opinion based on

25   what's included in the declaration.

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ROUGH DRAFT   112

1   Q. So your testimony under controller in

2   paragraphs 39, 40, 41, and 42 are not based on an

3   understanding of what the law provides for

4   construing claim terms?

5   MR. XU: Objection, mischaracterizes prior

6   testimony.

7   A. Yeah, that's not what I said. What I said

8   was I'm not presenting a legal opinion. I have been

9   given information that I've presented here in the

10   declaration, and I'm providing an opinion based on

11   those statements.

12   Q. So when you said in paragraph 39 I

13   understand that a limitation in a patent claim can

14   be expressed as a, quote, means for performing a

15   function, what do you understand? What is your

16   understanding?

17   A. Right. I'm just referring to the

18   declaration. That a limitation in a patent claim

19   can be expressed as a means for performing a

20   function, and that appeared to me from my

21   understanding, based on these paragraphs, to be the

22   case here because there was a fairly generic term

23   that was used in conjunction with the results of

24   that. And so I looked to the specification, which I

25   understand is the proper way to construe such terms.

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ROUGH DRAFT   113

1   Q. And you didn't find any specific structure

2 or composition for the camera controller other than

3 to say it's preferably a microprocessor, right?

4   A. I -- like I said, I did not find details

5 on how the controller controls.

6   Q. Well, again, we'll go back to what you

7 said. Was it relevant or not that Mr. Konicek did

8 not describe the controller other than to say it's a

9 microprocessor, in your view?

10   A. Is it relevant to say that.

11   Q. Was it relevant to your conclusions that

12 you reviewed figure 3 of the patent and it depicts

13 the camera controller as an empty box and that the

14 specification does not provide any detail regarding

15 the structure and composition of the camera

16 controller other than to say it's preferably a

17 microprocessor?

18   A. And --

19   Q. Structure and composition.

20   A. The question was do I find that relevant?

21   Q. Yes.

22   A. My purpose for including this statement

23 was to indicate all the information that I could

24 find there and I feel like if I had left something

25 out we'd be discussing why I left out something that

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ROUGH DRAFT   114

1 was described in the specification for that. I

2 wanted to be complete. I wanted to present a

3 complete picture of what I saw in the specification

4 regarding this. And as I say, the specification

5 does not provide any detail other than that. So,

6 yes, I find that relevant.

7   Q. Like you to refer back to Exhibit 4A, the

8 Konicek '761 patent. I'm sorry. '472 patent.

9   A. Okay. Exhibit 4A, the '472?

10   Q. Right.

11   A. Okay. I'm with you.

12   Q. Okay. If I remember your testimony

13 previously, you said you didn't review any of the

14 specific references cited above the text of the

15 patents, right?

16   A. Not in isolation, but again, as I answered

17 before, as they were referenced in patent history.

18   Q. Did you happen to notice in reviewing the

19 file history whether any of the information

20 disclosure statements cited the RSC-164 products?

21   A. I -- I didn't specifically notice that.

22   Q. If you would refer to page 15 of the

23 patent.

24   A. 15 on the PDF?

25   Q. Page 15 of the patent itself. I don't

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ROUGH DRAFT   115

1 know what the --

2   A. Okay.

3   Q. -- PDF number would be. Assuming it's the

4 same number, but --

5   A. I don't know that I have page numbers on

6 the patent.

7   Q. At the top of the patent.

8   A. I have the -- I have the PDF page numbers

9 but not --

10   Q. All right. I'll find it for you.

11   A. Okay.

12   Q. It's the same, page 15.

13   A. This is figure 1A, kind of a camera image?

14 Is that the correct one?

15   Q. It's the page before that. Do you have

16 Exhibit 4A open or 4?

17   A. I have 4A open. Oh, okay. I see -- I see

18 the page numbers now. They stop after that page.

19   Q. Thank you.

20   A. Sorry.

21   Q. All right. So page 15 is correspondent to

22 page 15 in the PDF. If you look partway down on the

23 left column, there is reference to the RSI64 data

24 sheet. Do you see that?

25   A. I have on the left --

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ROUGH DRAFT   116

1   Q. Left-hand column?

2   A. Okay.

3   Q. About a third of the way down the column,

4 RSC-164i data sheet.

5   A. Yes, I see that.

6   Q. General purpose microcontroller featuring

7 speech recognition.

8   A. Yes.

9   Q. You see that?

10   A. I do.

11   Q. So -- and that was actually cited in the

12 patent specification. So that -- you weren't aware

13 of that, were you? In the patent file history. I'm

14 sorry. So you weren't aware of that, were you?

15   A. I don't think that I had individually

16 identified this reference or had it called to, you

17 know --

18   Q. Called to your attention?

19   A. Noticed it, yeah, in my review.

20   Q. If you would turn to column 1 of the

21 patent, which is PDF page 24.

22   A. Okay. I'm concerned I have a different

23 version because there is page 23 for me on the PDF.

24 But --

25   Q. Are you 4 or 4A? 10 or 10A? I'm sorry, 4

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ROUGH DRAFT   117

1 or 4A? I'm sorry?

2   A. This is Exhibit 4A, Tab 10A, the '472

3 patent, but when I pull up the first page of text,

4 this is like with column 1 and column 2, that, when

5 I hold my mouse over it, it says page 23 of 32.

6   Q. Okay. Mine says 24, but it's column 1.

7 Just look at column 1.

8   A. I'm there.

9   Q. All right. Now go to column 1, line 55.

10   A. 55. Okay.

11   Q. And I'd like you to read for the record

12 what's at lines 55 to line 58.

13   A. Okay. "Voice recognition techniques are

14 well known in the art and have been applied to

15 cameras. See, for example, U.S. Patent Nos.

16 4,951,079, 6,021,278, and 6,101,338 which are herein

17 incorporated by reference."

18   Q. Did you take note of that part of the

19 description when you reviewed the patent?

20   A. I reviewed that section, but I did not

21 specifically call out those patent numbers outside

22 of their inclusion in any history for the patent.

23   Q. Is it -- did you read those patents?

24   A. No, I did not individually read those

25 patents.

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ROUGH DRAFT   118

1   Q. Do you have any understanding of what

2   incorporation by reference means in a patent?

3   A. I wouldn't answer what seems to be a legal

4   question.

5   Q. I'm asking what you understand it to be.

6   A. So I understand that that information can

7   be -- is referenced as part of this patent. I

8   understand that there were many patents associated,

9   I guess, with this endeavor, and those may be

10   auxiliary patents.

11   Q. Well, were you instructed at any time that

12   text that is incorporated by reference in a patent

13   is to be treated as if it's repeated in the patent?

14   A. I'm -- I don't -- I don't believe that,

15   and I wasn't instructed to review those patents.

16   That wasn't part of my task.

17   Q. You don't believe that. What does that

18   mean? You don't personally believe it or you

19   weren't instructed?

20   A. I think I lost track of our conversation.

21   Could you repeat?

22   Q. Were you ever instructed that essential

23   material may be incorporated by reference into a

24   patent and is treated as if it is actually repeated

25   in the patent?

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ROUGH DRAFT   119

1   A. I don't recall ever being given that

2 instruction.

3   Q. And do you understand that if it's

4 incorporated by reference or if U.S. patents are

5 incorporated -- strike that.

6   Do you have an understanding whether if

7 U.S. patents are incorporated by reference, they are

8 to be treated as part of the disclosure?

9   A. I don't know that I have a firm legal

10 understanding of that. I understand in general what

11 a reference is, but again, I was not asked to review

12 those patents and that wasn't part of my task.

13   Q. So to be clear, then, the opinions that

14 you offered in your declaration were made without

15 any consideration of the text of those patents,

16 correct, that were incorporated by reference as

17 identified at column 1, lines 55 to 58?

18   A. I was not asked to review those patents,

19 and those -- and the information contained in those

20 is not a part of my declaration.

21   Q. And so your opinions were made in your

22 declaration without considering the patents that

23 were incorporated by reference by Mr. Konicek at

24 lines 55 to 58 of column 1 of his patent, correct?

25   A. I was not asked to review them.

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ROUGH DRAFT   120

1   Q. The answer calls for a -- Dr. Garlick,

2   this is an answer that the court is going to expect

3   you give a yes or no answer to regardless. All

4   right? It's a fair question. And I'm -- we're

5   entitled to know.

6   Were your opinions based -- so I'll ask it

7   again and try and be simple. Is it a fact that the

8   opinions you have provided the court in your

9   declaration did not consider the text incorporated

10 by Mr. Konicek at columns 55 to 58 of his column 1

11 of his patent, Exhibit 4A?

12   A. I did not review those patents and so

13 consequently, information contained in them is not

14 reflected in my declaration and that wasn't part of

15 my task.

16   Q. And it's not -- they're not reflected as a

17 basis for your opinion either, correct?

18   A. That's correct.

19   Q. If you would please return to column 8 of

20 the patent, Exhibit 4A.

21   A. Okay.

22   Q. Top of column 8, would you read lines 4 to

23 9.

24   A. "According to another aspect of the

25 present invention, the electronic viewfinder (EVF)

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ROUGH DRAFT   121

1 typically used on modern digital cameras includes a

2 gaze tracking capability which is well known in the

3 art. See, for example, U.S. Patent No. 6,758,563 to

4 Lavola which is herein incorporated by reference."

5   Q. Did you see that part of the text when you

6 reviewed the specification?

7   A. I did.

8   Q. Did you review the patent to Lavola that's

9 identified in column 8 of Exhibit 4A?

10   A. I did not.

11   Q. And again, it is correct that the opinions

12 you've provided to the court in your declaration do

13 not consider the disclosure incorporated by

14 Mr. Konicek at column 8 of his patent, Exhibit 4A,

15 correct?

16   A. That's correct, because I was only asked

17 to review the two patents, as I stated in my

18 declaration.

19   Q. I'd like to mark as Exhibit 12

20 United States patent 6021278 to Bernardi, et al.

21 So let me know when you've got that.

22   A. Okay. I have Exhibit 12 open.

23   Q. All right. I don't. I'm still working on

24 it. There we go. I've got it.

25   Can you please confirm by number that the

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ROUGH DRAFT   122

1   patent to Bernardi 6021278, Exhibit 12, is the same

2   patent that is incorporated by reference by

3   Mr. Konicek at column 1 of his '472 patent which is

4   Exhibit 4A?

5   A.   Those numbers appear to match.

6   Q.   All right. And you've not seen Exhibit 12

7   previously, correct?

8   A.   Again, I don't have a recollection of the

9   entire history of the patents if some of the

10   documents were contained there, I may have briefly

11   looked at it. But again, you know, as I stated

12   before, those were in excess of 10,000 page

13   documents in various languages and I don't recall

14   every one. I did not specifically print this patent

15   and read it in its entirety.

16   Q.   Are your opinions then not -- let me

17   strike that. Then it's fair to say that since you

18   don't remember reading it or looking at it, that it

19   didn't form a part of your opinion that you're

20   offering to the court in your declaration,

21   Exhibit 2, correct?

22   A.   Yes. As stated in my declaration, the

23   materials considered were the '472 patent and the

24   '761, I believe.

25   Q.   I ask you to refer to column 3 of this

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ROUGH DRAFT   123

1 patent which is page 12 of the PDF.

2   A. All right. It's page 11 for me but I see

3 12.

4   Q. That's okay. Column 3 beginning at line

5 20.

6   A. Okay.

7   Q. Can you just read into the record there

8 down to line 29.

9   A. Okay. "Figure 4 is a block diagram"?

10 Is that the right --

11   Q. Correct, yes.

12   A. Okay. "Figure 4 is a block diagram of the

13 voice recognition camera of the present invention.

14 The user inputs voice commands through the

15 microphone 30 and the microcontroller 50 such as a

16 sensory RSC-164 chip recognizes the voice command

17 and operates the intended function. Such voice

18 recognition can be that as in U.S. Patent No.

19 4,951,079. In the preferred embodiment, the

20 microswitch 45 sends a signal to the microprocessor

21 50 for indicating the current state of the

22 microswitch 45. If the microcontroller 50

23 determines that the microswitch 45 is activated, the

24 image would be automatically rotated 180 degrees"

25 and so on.

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ROUGH DRAFT   124

1   Q. So on.

2   A. Okay.

3   Q. So you see that this particular patent to

4   Bernardi, Exhibit 12, Patent No. 6,021,278, actually

5   identifies the microcontroller 50 as a sensory

6   RS-164 chip. Do you see that?

7   A. Yes, I do.

8   Q. And you do realize now that this patent to

9   Bernardi, Exhibit 12, patent 602-1278, is

10   incorporated by reference in Mr. Konicek's patent

11   specification?

12   A. I see the reference in -- to this in the

13   other -- in Mr. Konicek's patent.

14   Q. So is it fair to say that prior to today,

15   you had no idea that Mr. Konicek's patent in fact

16   identified to the reader this patent, Exhibit 12,

17   which was incorporated by reference, and also the

18   sensory RSC-164 chip by incorporation by reference?

19   MR. XU: Objection, vague.

20   Q. Let me put it this way. The fact that

21   this patent was incorporated by reference by

22   Mr. Konicek and also references the sensory RSC-164

23   chip is news to you as of today, correct?

24   A. I had not previously specifically reviewed

25   this reference to the sensory RSC-164 chip.

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ROUGH DRAFT   125

1   Q. That's not the question I asked. The

2 court -- I want to tell the -- let the court know,

3 Dr. Garlick, were you aware prior to today when you

4 provided the testimony in your declaration that

5 Mr. Konicek incorporated by reference this patent,

6 including the sensory RSC-164 chip, yes or no? Were

7 you aware of this fact when you made your testimony?

8   MR. XU: Objection, vague.

9   A. I had not specifically reviewed this

10 reference to the sensory RSC-164.

11   Q. I'd like you to pull your declaration up

12 again, okay, if you can.

13   A. Sure. 1? 2? Okay. Exhibit 2?

14   Q. Right. Go to the statement right above

15 your signature.

16   A. Okay.

17   Q. It's on page 17 of your -- I'm not quite

18 sure what page of the declaration it is, but it's

19 last -- right before your Exhibit 1. So above your

20 signature you make a statement, right?

21   A. Yes.

22   Q. What does it -- would you read that into

23 the record, please.

24   A. Sure. I declare under penalty of perjury

25 under the laws of the United States of America that

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ROUGH DRAFT   126

1 the foregoing is true and correct.

2   Q. And in paragraph 41 of your declaration,

3 you say that the specification does not provide any

4 detail regarding the structure and composition of

5 the camera controller other than to say it's

6 preferably a microprocessor. Do you see that?

7   A. Yes.

8   Q. And you say any detail, correct?

9   A. Yes. The specification of this patent

10 does not provide any detail other than -- and by any

11 detail, I mean a -- some pseudocode, a flow chart

12 and so forth.

13   Q. Why didn't you tell the court about the

14 incorporation by reference and the RSC-164 product?

15   A. Because I wasn't asked to review that

16 patent and it wouldn't have made a difference here

17 in my opinion.

18   Q. Have you studied -- have you studied that

19 patent? You've not studied Exhibit 12, have you?

20   A. Exhibit 12.

21   Q. The one that's incorporated -- one of the

22 five patents incorporated by reference. You haven't

23 studied that patent, have you?

24   A. No, I did not specifically study that

25 patent.

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ROUGH DRAFT   127

1   Q. You don't know whether it makes a

2   difference or not, do you?

3   A. My opinions here are based on the '472

4   patent and the '761 patent. I believe I have the

5   numbers correct on those. And within those patents,

6   that is the statement that I'm making. And it

7   wouldn't -- like I said before, it wasn't make a

8   difference. If there's a model number described in

9   one of these patents directly. What I'm looking for

10 is how it does this. And a model number doesn't

11 tell me that.

12   Q. When you were instructed as to what law to

13 apply on your testimony in the section on

14 controller, were you informed that indefiniteness

15 must be proven by clear and convincing evidence?

16   A. What I was instructed to is contained

17 here. I don't know that that specific instruction

18 was conveyed.

19   Q. So in performing -- I'm sorry. Strike

20 that. So in offering your opinions on

21 indefiniteness in your declaration, you did not

22 apply a standard of -- you were not instructed to

23 imply as a standard that it must be proven by clear

24 and convincing evidence, correct?

25   A. I was informed that --

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ROUGH DRAFT   128

1   Q. Dr. Garlick, I don't need -- I'd like to

2   have a simple answer to my question. The court, if

3   you were sitting in -- you're supposed to answer as

4   if you were sitting in a courtroom. So you're to

5   answer a question that fairly calls for a yes-or-no

6   answer, generally the courts will insist that you

7   provide that and in fairness you should try to

8   provide that and if you can't, you should ask me to

9   rephrase the question. Otherwise you're going to be

10   viewed as being nonresponsive. So can we try and do

11   that?

12   MR. XU: Steve, you should let the witness

13   answer his question.

14   MR. LISA: The witness --

15   MR. XU: He has been answering questions

16   in his own ways using his words.

17   MR. LISA: Okay. Jason, you might want to

18   repeat that because you froze.

19   MR. XU: Sorry. I'm just saying you

20   should let the witness answer your questions.

21   MR. LISA: I would love for the witness to

22   answer my question.

23   MR. XU: And he has been answering your

24   questions and I have not instructed him not to

25   answer any of your questions, so --

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ROUGH DRAFT   129

1   MR. LISA: When the judge sees his

2   answers, he will form an opinion as to whether he's

3   fairly responding to questions or not. So that's

4   fine. All right?

5   Q.   Were you advised or informed, Dr. Garlick,

6   to address your indefiniteness opinions using a

7   clear and convincing evidence standard, yes or no?

8   A.   I don't believe I was given that specific

9   instruction.

10   Q.   Thank you. Did you consider whether the

11 court in this district has entered any decisions or

12 opinions regarding whether or not words like a

13 control word were to be construed equivalently to a

14 means type clause?

15   A.   There's a lot in that question.

16   Q.   I'll ask it --

17   A.   Yeah, could you break that apart, please?

18   Q.   Were you instructed as to any governing

19 law regarding the term controller and construing

20 controller in the context of means plus function

21 analysis?

22   MR. XU: Objection, vague.

23   A.   My understanding of means plus controller

24 or, sorry, means plus function is what I've included

25 in the declaration here.

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ROUGH DRAFT   130

1   Q. Like to mark as Exhibit 13 a decision by

2 the United States District Court for the Western

3 District of Texas, Midland Division, True Chemical

4 Solutions versus Performance Chemical Company. That

5 will be appearing shortly.

6   All right. That should be there now?

7   A. I see that.

8   Q. Do you see that this is a claim

9 construction order?

10   A. I do.

11   Q. If you would turn to paragraph -- to page

12 5 of the order, please, bottom page 5 of the order.

13   A. Okay. I see a section C, indefiniteness.

14   Q. Right. You've offered opinions on

15 indefiniteness, right?

16   A. Yes.

17   Q. And I'd ask you to read to yourself that

18 first paragraph.

19   A. (Witness complies.) I see that.

20   Q. And do you see in particular that it

21 states, quote, whether a claim is indefinite is

22 determined from the perspective of one of ordinary

23 skill in the art as of the time the application for

24 the patent was filed?

25   A. Yes.

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ROUGH DRAFT   131

1   Q. Then it continues, quote, indefiniteness

2 must be proven by clear and convincing evidence,

3 close quote. Do you see that?

4   A. I do.

5   Q. And do you have any understanding as to

6 what that burden is?

7   A. I'm not an attorney. I'm not going to

8 offer what appears to me to be legal opinions on

9 this. This --

10   Q. And you weren't instructed as to what that

11 burden is in this case, correct?

12   A. That's correct.

13   Q. If you would, please turn to page 11 of

14 the -- let me know when you get to page 11.

15   A. Okay. I'm there.

16   Q. All right. Do you see term 7 that's being

17 construed there is, quote, controller in

18 communication with each pump, close quote? On the

19 top, right at section G.

20   A. Okay. Term 7, controller in communication

21 with each pump.

22   Q. The very first paragraph of text states,

23 quote, True Chem contends the controller, quotes, is

24 a means plus function term while PCC contends

25 otherwise. True Chem then contends that if Section

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ROUGH DRAFT   132

1 112 paragraph F applies to quote controller, close

2 quote, then it is indefinitely because it lacks an

3 algorithm to perform the function. Do you see that?

4   A. Yes. Let me read this one more time.

5 Okay. Yes, I see that.

6   Q. So do you see there that the argument

7 regarding whether there's an algorithm to perform

8 the function follows only because there would be a

9 conclusion that the word controller is a means plus

10 function term, do you see that? Two-step analysis.

11   A. I have a general understanding of that

12 process that --

13   Q. Okay. All right. So the following

14 paragraph states, as described above, there is a

15 presumption that section 112 paragraph F does not

16 apply when the word means or another similar word

17 does not appear, correct?

18   A. That's what's written.

19   Q. Do you see that? And you said the same

20 thing, right, in your opinions, that there's a

21 presumption?

22   A. I see that line written there and I

23 believe a similar statement appears in the

24 declaration.

25   Q. The following line, the court states, this

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ROUGH DRAFT   133

1 is the court's opinion, in this case a person of

2 ordinary skill in the art (POSITA) would not

3 understand the, quote, controller, close quote was

4 written in means plus function language. Do you see

5 that?

6   A. I do.

7   Q. Period. Then continues, to a POSITA with

8 a background in electrical engineering, a controller

9 is a well-known and well-understood term that refers

10 to an electrical device (E.G.system on a chip or

11 application specific integrated circuit that

12 controls the operations of other components in the

13 system. Do you see that?

14   A. I do.

15   Q. So in this case what is the court, to your

16 understanding, saying?

17   A. You want me to summarize the court's

18 opinion?

19   Q. Well, do you under -- let me ask it this

20 way. Do you agree with that statement?

21   A. I think this is highly context dependent.

22   Q. It's actually not. I'm asking if you

23 agree with a court's statement that a POSITA with a

24 background in electrical engineering, a controller

25 is a well-known and well-understood term that refers

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ROUGH DRAFT   134

1 to an electrical device (E.G system on a chip or

2 application specific circuit that controls the

3 operation of other components in the system. Do you

4 agree with that statement?

5   A. I would have to see the context in which

6 that is -- that is presented. This is a case that

7 I've never seen before.

8   Q. This is --

9   A. If their controller described how it

10 controlled, then --

11   Q. That's not the question, sir. A POSITA

12 has no idea what is claimed or disclosed in this

13 spec. POSITA is a person of ordinary skill in the

14 art at the time of the inventor's invention, and

15 that's the way that statement is phrased.

16   So I am asking you whether you agree with

17 the court that to a POSITA with a background in

18 electrical engineering, a controller is a well-known

19 and well-understood term that refers to an

20 electrical device (E.G system on a chip or

21 application specific circuit) that controls the

22 operation of other components in the system. Do you

23 agree with him or not?

24   MR. XU: Objection. Asked and answered.

25   A. Yeah, I think I've provided my answer

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ROUGH DRAFT   135

1 here. This is going to depend on the context in

2 which the term is used, which I -- which I haven't

3 seen. It's -- I think, you know, outside the scope

4 of the patent, there may be a general understanding

5 of what a controller is. I think within the scope

6 of the patent, it's described as a controller, a

7 processor, and it's -- it's not -- it's not clear

8 for those reasons and for the reasons that we don't

9 know how it controls.

10   Q. So let's go outside the scope of the

11 patent and just talk about the person of ordinary

12 skill in the art for which you have offered an

13 opinion as to what he knows and doesn't know. Okay?

14   So outside whatever patent was involved in

15 the judge's decision of Exhibit 13, do you agree

16 that a POSITA with a background in electrical

17 engineering at or around the time of 2006 would

18 agree that a controller is a well-known and

19 well-understood term that refers to an electrical

20 device such as a system on a chip or application

21 specific integrated circuit that controls the

22 operations of other components in the system?

23   A. Again, I think it's dependent on the

24 context in which it's presented. There are probably

25 thousands of different kinds of controllers, and

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ROUGH DRAFT   136

1 they would vary widely. And this -- in the context

2 of the patent, it's a generic term and outside the

3 context of the patent also. It's just a -- it's

4 like chip or thing, device.

5   Q. So it's your testimony then that the term

6 controller is the same as a thing or chip? That's

7 your testimony.

8   A. My testimony is that it depends on the

9 context.

10   Q. Just said it is a thing or a chip. It's a

11 generic term like a thing or chip. Is that your

12 testimony?

13   A. Depending on the context, it's used

14 generically.

15   Q. You said here that a person of ordinary

16 skill in the art has a bachelor's degree, for

17 example, in electrical engineering and several years

18 of experience which is exactly what this court says

19 here, background in electrical engineering. Right?

20   A. Uh-huh. Yes.

21   Q. All right. So is it your testimony that a

22 person of ordinary skill in the art having a

23 background in electrical engineering in or around

24 2006 would consider a controller a generic term like

25 a chip or thing?

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ROUGH DRAFT   137

1   A. I think it depends on the context.

2   Q. What if the controller is connected to a

3 keyboard and memory and a display? Does that help

4 give you some context?

5   A. Well, then I know that we're talking about

6 something in the electronics realm because

7 controller can be a person at a company also.

8 The -- but.

9   Q. So let's give some more context. Let's

10 say then that it is a controller that is connected

11 to, coupled to -- strike that.

12   Let's say the controller is coupled to a

13 memory and a touch sensitive display and the

14 inventor states that it is preferably a

15 microprocessor like an RSC-164. Does that give you

16 context to say what the controller is?

17   A. It gives, you know, the context that it is

18 within a -- the realm of electronics. It -- I think

19 it's a generic term that's used as a placeholder

20 that doesn't provide any details for how it

21 controls. And even if we assign a serial number to

22 it or -- it doesn't tell me how it controls, how it

23 does what it's supposed to do or what it's described

24 as doing.

25   Q. So that we're court -- we're clear then

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ROUGH DRAFT   138

1 for the court, it is your testimony that the term

2 controller as used in the patents-in-suit is a

3 generic term that does not let you know what its

4 structure is?

5   A. That's correct.

6   Q. And that there is no structure disclosed

7 in the spec for it, correct?

8   A. That's correct.

9   Q. Do you know what a controller is

10 regardless of how it controls?

11   A. Again, there may be a general

12 understanding of a controller, you know, outside of

13 this context, but you need to know what it does in

14 order to determine its capabilities, its

15 requirements, and so forth. So it's highly

16 dependent on the context.

17   Q. So in your view then, Exhibits 11 and 11A,

18 which show the RSC-164 microcontroller, does not

19 depict a controller?

20   A. No, I didn't say that. These are

21 described as controllers.

22   Q. Then let me ask it that way. Do you agree

23 that the RSC-164 as shown in Exhibits 11 and 11A are

24 properly characterized as controllers, yes or no?

25   MR. XU: Vague.

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ROUGH DRAFT   139

1   A. One of them's described as a controller.

2 The other one's described as a -- had microprocessor

3 written there. Those can generally be two different

4 things. And so -- I'm sorry. What was the

5 question?

6   Q. Would you agree that the devices shown in

7 Exhibits 11 and 11A would be understood by a person

8 of ordinary skill in the art as being a controller?

9   MR. XU: Same objection.

10   A. I would think that these specific devices

11 would be -- they are described as controllers by the

12 manufacturer.

13   MR. LISA: Thank you. Why don't we take a

14 short break for about five minutes. Okay?

15   (Recess from 2:30 to time   )

16 BY MR. LESKO:

17   Q. Hello, Dr. Garlick.

18   A. Hello.

19   Q. I'm Justin Lesko, one of the attorneys for

20 Cutting Edge Vision, and appreciate your time today.

21 Just have a few questions for you.

22   First question for you is, during the

23 break did you discuss your testimony with counsel at

24 all?

25   A. During this most recent break, I did not.

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ROUGH DRAFT   140

1   Q. Okay. So I'd like you to pull up

2 Exhibit 12 again, which is the Bernardi patent that

3 you were discussing with Mr. Lisa. Let me know when

4 you're there.

5   A. Okay. I have Exhibit 12 pulled up.

6   Q. Okay. So I'm going back to the same

7 paragraph that you were discussing with Mr. Lisa, so

8 we're at column 3, starting on line 25.

9   A. Okay. Would you like me to read that?

10   Q. Sure, yeah. There's just one sentence

11 there. It starts at line 25 and can you just read

12 that sentence.

13   A. Okay. "In the preferred embodiment, the

14 microswitch 45 sends a signal to the microprocessor

15 50 for indicating the current state of the

16 microswitch 45."

17   Q. Okay. And a POSITA reading that sentence

18 in 2005, you know, the POSITA is reading that, what

19 would -- how would they -- what would they

20 understand that to mean?

21   MR. XU: Objection, vague.

22   A. That a -- an electrical signal has been

23 sent to a microprocessor indicating the current

24 state of the switch.

25   Q. Okay. Thank you. So like to pull up

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ROUGH DRAFT   141

1   another exhibit here. Just give me one minute.

2   Steve is not working my exhibits, so I'm going to be

3   a little slower than Steve was.

4   (Exhibit no.   marked)

5   Q. Okay. So I just introduced plaintiff's

6   Exhibit 14, if you could refresh your folder there.

7   A. Sure.

8   Q. Let me know when you're there.

9   A. All right. Okay. I have Exhibit 14

10 pulled up.

11   Q. So on -- okay. So on page 5 of the

12 document -- first of all, can I ask you, do you

13 recognize what this document is? Have you seen this

14 before?

15   A. Yes. This appears to be my declaration in

16 a previous case.

17   Q. Okay. And you recall submitting that, and

18 I assume you submitted this declaration under oath

19 at that time? Is that right?

20   A. Yes. Give me a second here to review.

21   Q. Sure. Take your time.

22   A. Okay. Sorry. Could you repeat your

23 question?

24   Q. Sure. Do you remember this declaration?

25   A. I do.

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ROUGH DRAFT   142

1   Q. Okay. Do you remember, was this submitted

2 under oath in this case?

3   A. Are you asking if I gave a deposition with

4 regard to this or --

5   Q. Here, let's just go to page 24 of the

6 document. It's the last page of Exhibit 14.

7   A. Okay.

8   Q. So paragraph 48, what does that say? Can

9 you read that to me?

10   A. "I declare under penalty of perjury that

11 the foregoing is true and correct."

12   Q. And that was your belief at the time you

13 submitted this declaration, right?

14   A. Yes.

15   Q. Now, turn back to page 6 for me. And let

16 me know when you're there.

17   A. Let's see. I am on page 6 of the document

18 and page 6 of the PDF, but I think that may be

19 different for you.

20   Q. Are you looking at paragraph 17 on this

21 page?

22   A. Okay. That's on page 5 for me. Okay.

23 I'm at paragraph 17.

24   Q. The third sentence starts, the token end a

25 request to verify the in store purchase are

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ROUGH DRAFT   143

1 transmitted to a server which provides the retailer

2 electronic device a response indicating whether the

3 token is valid and the retailer electronic device

4 receives the indication.

5   Do you see that?

6   A. I do.

7   Q. The retailer electronic device receives

8 the indication, what does that mean?

9   A. So it's been awhile since I have reviewed

10 this material. It's -- I think I'd have to go back

11 and review the material related to this. It was

12 awhile ago, to give you a definitive answer.

13   Q. Let me ask you a more specific question.

14   A. Okay.

15   Q. Says here the retailer electronic device

16 receives the indication. Reviewing this testimony,

17 can an electronic device, just generally, receive an

18 indication? Is that your understanding?

19   MR. XU: Objection, vague.

20   A. I'm sorry. I didn't hear the -- Mr. Xu.

21   MR. XU: I just said objection, vague.

22   A. Oh. The question was can a retailer

23 electronic device receive an indication? I think,

24 again, based on my limited recollection of this

25 material in this circumstance, that was what I --

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1   what I wrote here.

2   Q. So in general, would a person of ordinary

3   skill in the art understand an electronic device can

4   receive an indication?

5   A. Depending on the context. In this

6   context, I believe so.

7   Q. So are electronic devices to your

8   understanding, let's say in 2005, are electronic

9   devices capable of receiving an indication from some

10   other device?

11   A. I think it's probably more generally

12   referred to as a signal. Sometimes it's described

13   as voltage. So the choice of words here I think

14   is -- was not significant.

15   Q. What type of signal do you mean?

16   A. It could be a data signal, a control

17   signal, just -- it's going to be voltage on a wire

18   at the lowest level.

19   Q. Would you also call that an electronic

20   signal?

21   A. I would think so. I mean, these are all

22   sort of general terms that I don't ascribe specific

23   meaning to. You know, it's not that it would be one

24   and not the other. You know, I don't know that I

25   have a better answer for that.

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ROUGH DRAFT   145

1   Q. Okay. And in this circumstance says

2 electronic device receives the indication, and it

3 says a server, quote, provides the retailer

4 electronic device the response indicating whether

5 the token is valid.

6   So my question is, did the electronic

7 device receive the indication in this case from the

8 server according to your testimony?

9   MR. XU: Objection, vague.

10   A. The question was, was it transmitted to

11 the server?

12   Q. From the server to the electronic device.

13   A. Well, the sentence says the token and a

14 request to verify the in store purchase are

15 transmitted to a server.

16   Q. Yeah, and then keep reading, please.

17   A. Okay. Which provides the retailer

18 electronic device a response indicating whether the

19 token is valid and the retailer electronic device

20 receives the indication.

21   Okay. So yes, the server would be

22 providing the retailer electronic device the

23 response.

24   Q. Also the indication was provided from the

25 server to the electronic device?

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ROUGH DRAFT   146

1   A. I think it's described here as a response.

2   Q. It says the retailer electronic device

3 receives the indication. So what -- I think you

4 said that was a signal? Is that right?

5   A. Again, from my recollection, and I would

6 need to review the materials related to this because

7 I don't recall the details of the case. I think

8 I -- I didn't ascribe particular meaning to these or

9 I mirrored the language that was used in the patent.

10   Q. Okay. Like to turn to another page of the

11 same document. Can you turn to page 20, please.

12   A. Sure. Okay. Paragraph 43?

13   Q. One second.

14   A. Okay.

15   Q. Looking at actually paragraph 42, please?

16   A. Okay.

17   Q. You see that?

18   A. I do.

19   Q. So this -- if you could read here starting

20 at 42, starting with the word Rothschild. Can you

21 read this sentence back to me, all the way through

22 claim 1?

23   A. Okay. "Rothschild also does not disclose

24 or render obvious the retailer device transmitting

25 to the server information indicating that the

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ROUGH DRAFT   147

1   customer's in-store purchase of goods and services

2   has been inspected and approved by the user of the

3   retailer device (claim 1)."

4   Q. So this says information indicating. To a

5   person of ordinary skill in the art at the time of

6   invention, what does information indicating mean in

7   2005?

8   MR. XU: Objection, vague.

9   Q. Let me ask you another question. I'm

10 sorry. Withdraw that question.

11   Is it your understanding that information

12 can indicate based on reading this testimony?

13   MR. XU: Objection.

14   A. So this is a quote from someone else's

15 language, right? And --

16   Q. Well, you must have understood it, right,

17 because you said Rothschild does not disclose or

18 render obvious this language. So presumably if that

19 was your testimony, did you understand this

20 language?

21   A. Yes. It would be my opinion that -- and

22 again, it's going to depend on the context -- that

23 in general an indication is a signal, and that is

24 not something that's generated simply from

25 information. If we take this in context here, we

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1 have a device transmitting, and that is more of an

2 active process as opposed to an indication simply

3 from information.

4   So I -- and again, this is a quote from

5 someone else's claim. So I think it's going to

6 depend on context, but in general, I tend to think

7 of an indication more as something that's been

8 actively produced, I guess, but context dependent.

9   Q. So Dr. Garlick, do you ever use the term

10 mobile device?

11   A. Yes, I believe so.

12   Q. What does that term mean to you? Or first

13 let me ask you, mobile device, would that be a

14 commonly-used term in 2005?

15   A. I think probably in 2005 it would have

16 possibly been that people referred to things more as

17 a cell phone, but in general, a mobile device is,

18 you know, a very general term for something that can

19 be taken with you. But I don't think that mobile

20 device and cell phone are necessarily mutually

21 exclusive synonyms.

22   Q. Would you characterize a cell phone as a

23 type of mobile device?

24   A. Yes.

25   Q. Okay. And what are the usual components

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1 of a cell phone, just high level hardware

2 components?

3   A. It's going to depend a lot on the specific

4 product. But in general, it would need -- we're

5 talking about a cell phone?

6   Q. Yes.

7   A. Okay.

8   Q. Or cellular device, let's say, cell phone,

9 cellular device.

10   A. I would say at the minimum it would need a

11 cellular radio and some type of -- some type of

12 processing.

13   Q. Some type of processing. What do you mean

14 by that? Can you explain that?

15   A. Some hardware to run some software.

16   Q. How do you usually refer to that hardware

17 that runs the software on a cell phone or, I'm

18 sorry -- yes, on a cell phone. Excuse me.

19   A. How would I refer to -- well, an Apple

20 device would have a specific CPU associated with it.

21 It's going to -- it's going to depend highly on the

22 specific device in terms of what hardware is

23 contained within it.

24   Q. Okay. Let's say -- is it typical for

25 there to be a processor in a cellular device?

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1   A. Again, there are cellular devices that are

2 related to, say, internet of things that are very

3 small devices that would have something that I would

4 characterize as very small capability for running

5 any type of code. So again, I don't know that I

6 could characterize it in kind of an easy

7 distinction.

8   Q. Let's say consumer cell phones. Let's

9 just use that as an example. Do you think consumer

10   cell phones that people commonly use, are those

11   devices, in your view?

12   A. I mean, device is a very general term.

13   I -- sorry. Could you repeat the question?

14   Q. Is a consumer cell phone an example of a

15   device?

16   A. As device is a very general term and

17   encompasses many things, I would say yes.

18   Q. Do most of those cell phones have a

19   camera?

20   A. Again, probably highly dependent on model

21   number, time frame, time period, cost and so forth.

22   At present, yes.

23   Q. Okay. In 2005 were there cell phones with

24   cameras that existed?

25   A. I believe so.

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ROUGH DRAFT   151

1   Q. Okay. And was there cell phones at that

2 time with touch screens that you were aware of?

3   A. This would have been limited. Not in

4 probably widespread use, but I'm sure there may have

5 been examples.

6   Q. What about the hardware you're talking

7 about, controller hardware? Would that be included

8 in a cell phone?

9   A. Again, like I said, controller is a very

10 general word, and so the ability to process some

11 instructions would have been present on most

12 devices.

13   Q. What do you mean by process instructions?

14   A. I think I answered that before. To run

15 software, to perform the instructions of software.

16   Q. So if I describe to you a cell phone that

17 had a lens, cellular interface, a camera, a memory

18 and a touch sensitive display, would you understand

19 what I've just described to be a device?

20   MR. XU: Objection, vague.

21   A. Again, as device is a very general term, I

22 think it -- I think it encompasses the microphone

23 that I'm speaking into. So in that sense, I suppose

24 it would cover that as it covers almost everything.

25   Q. Okay. So setting aside that device is a

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1 broad term, which is what you said, you put

2 something together that included a lens, a cellular

3 interface, an image sensor, a memory, a touch

4 sensitive display and a controller, that something

5 can form a device?

6   MR. XU: Objection, vague.

7   Q. Or could be characterized as a device?

8 Excuse me.

9   MR. XU: Same objection.

10   A. So as you have described it here, I think

11 that would fit the categorization. As that term is

12 used in the patent, I think it is -- what is being

13 described is not clear.

14   Q. Right. I wasn't asking you that. I just

15 asked generally speaking, setting aside the patent,

16 the components I listed taken together, you'd

17 consider that to be properly characterized as a

18 device?

19   A. Well, that's the start of the patent,

20 right? So I -- I consider device to cover a wide

21 swath of things, and so that would include the

22 things that you have listed. But as I stated, in

23 the context of the full claims, it was unclear.

24   Q. So I'd like to ask you a yes or no

25 question. Yes or no, a lens, a cellular interface,

ROUGH DRAFT   153

1 an image sensor, a memory, a touch sensitive

2 display, and a controller form something. Is that

3 something capable of being characterized as a

4 device?

5   MR. XU: Objection, asked and answered.

6   Q. Yes or no?

7   A. I don't think I have anything to add to my

8 previous answer.

9   Q. A lens, a cellular interface, an image

10 sensor, a nonvolatile memory, a touch sensitive

11 display and a controller form something. Can the

12 something be called a device?

13   MR. XU: Same objection.

14   A. I would say yes in the sense that that

15 term is very generic.

16   Q. Thank you. If you'd pull up Exhibit 4A,

17 which is the '472 patent.

18   A. Yes. I'm there.

19   Q. Please go to column 12, line 62.

20   A. 12, 62. Okay. I'm there.

21   Q. If you could read lines 12, 62 to 66.

22   MR. XU: Read out loud or for him to --

23   Q. Read it out loud, please.

24   A. "In an enhancement to the above disclosed

25 embodiments of this aspect of the invention, the

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1 inventive camera system is operable for being

2 instructed to automatically initiate a connection to

3 the internet, LAN, printer, et cetera."

4   Q. In this statement, what is being

5 instructed to automatically initiate a connection to

6 the internet, according to this sentence?

7   A. I suppose in this sentence it would refer

8 to the inventive camera system.

9   Q. When you formulated your opinion in your

10 declaration, you said you read the patents and the

11 file histories. Did you read this sentence here?

12   A. Yes.

13   Q. Did you mention it in your declaration at

14 all?

15   A. I don't believe so.

16   Q. Why not?

17   MR. XU: Objection, vague.

18   A. It didn't seem relevant.

19   Q. Turn to column 17 of this patent. This

20 is, I think, the last page of the document.

21   A. Yes.

22   Q. I'm sorry. We have to actually switch

23 here too. Can you switch to Exhibit 4.

24   A. Okay.

25   Q. And go to -- now, this is the '761 patent.

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1   A. Yes. Okay. And if you wouldn't mind if

2 we could take a break at your next break in the line

3 of questioning.

4   Q. Sure.

5   A. Thanks.

6   Q. So now I'm looking at -- can you go to

7 column 16.

8   A. Yes. Okay. I'm there.

9   Q. So at line 66 -- or starting at line 58 is

10 claim 1 of the '761 patent. Is that right?

11   A. Yes.

12   Q. Okay. And looking at element FI, says --

13 could you read FI to me starting at line 66?

14   A. Yes.

15   Q. I'm sorry. I'm telling you the wrong --

16 yes, go ahead. Sorry.

17   A. Okay. So F is a controller configured to

18 receive via the text sensitive display a user

19 selection of an upload option that instructs the

20 device to -- that instructs the device to confine

21 automatic picture upload to periods without

22 potential cellular network access fees.

23   Q. This says instructs the device, right?

24   MR. XU: Objection, vague.

25   A. Yes.

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ROUGH DRAFT   156

1   Q. And if you scroll up, I'm going to stay in

2 the same patent here. At line 56 it says -- I'm

3 sorry. Go to column 12, line 56 of this Exhibit 4,

4 please, the '761 patent.

5   A. Okay. Okay. That's the line we looked at

6 before.

7   Q. So this says here, right, the inventive

8 camera system is operable for being instructed.

9   A. Yes.

10   Q. And then the claim we just read said

11 receive a user selection of an option that instructs

12 the device. Is that right?

13   A. Yes.

14   Q. So in that reading, we established that

15 there's a -- you know, when you put these elements

16 together it's a device. So can the inventive camera

17 system be the device according to this sentence at

18 56 through -- I'm sorry, 12, 56 through 58?

19   MR. XU: Objection, vague.

20   A. I think it could be. I think that there

21 are other things that fit here. Like I mentioned,

22 device is a very general term, and so I think

23 several things, as I mentioned in the declaration,

24 can be what's referenced to as the device.

25   Q. You didn't reference this section at all

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1 in your declaration. Is that right?

2   A. Sorry. Which section are we talking

3 about?

4   Q. This column 12, the inventive camera

5 system is operable for being instructed.

6   A. No, I don't believe I cited to that.

7   Q. Are there other examples -- you've read

8 the spec, right?

9   A. Yes.

10   Q. So let's turn to column 13, lines 16

11 through 22 of this same document, '761 patent.

12   A. Okay. So column 13, line 16? It doesn't

13 look like a sentence starts there.

14   Q. There's a sentence that says for example.

15 Do you see that sentence?

16   A. Yes. Okay. For example, the inventive

17 camera system can be instructed to automatically

18 send the pictures to an email account, internet

19 picture hosting site, web-based photo printing site

20 and so on.

21   Q. Correct. Thank you for reading that. So

22 when you look at that sentence, what's being

23 instructed in that sentence?

24   MR. XU: Objection, vague.

25   A. The inventive camera system.

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ROUGH DRAFT   158

1   Q. Did you cite that in your declaration?

2   A. No, I don't believe I cited that sentence.

3   Q. So let's look at column 5, line 31.

4 There's a sentence that starts there, "In another

5 example."

6   A. Okay. "In another example, perhaps the

7 phrase and word watch the birdie and, quote, click,

8 quote instruct the camera to take the picture."

9   Q. What's being instructed in that sentence

10 you just read?

11   MR. XU: Objection, vague.

12   A. It appears to be the camera.

13   Q. And then line -- column 5, lines --

14 starting at line 58 there's another sentence that

15 starts, for example. If you could read that to me.

16   A. "For example, the user would teach the

17 camera system by speaking the word, quote, snap,

18 quote, close to the camera and inform the camera

19 that this is a picture-taking command and would then

20 stand far from the camera and say snap, thus

21 teaching another utterance and so on."

22   Q. Right after where you stopped, it says and

23 instruct the camera that this is also a

24 picture-taking command. Do you see that?

25   A. Oh, I do. I --

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ROUGH DRAFT   159

1   Q. Okay. So what's being instructed there?

2   A. It appears to be the camera.

3   Q. Did you cite this sentence or the one we

4 talked about just a few minutes ago in your

5 declaration?

6   A. I did not.

7   Q. Are you aware of any instances in this

8 patent specification where something other than the

9 camera or the camera system is instructed or there's

10 the word "instruct" used with it?

11   MR. XU: Objection, vague.

12   A. I would need to go through and search the

13 document.

14   Q. Was that part of your process when you

15 wrote your declaration? Did you look for that word,

16 instruct, at all?

17   A. I don't recall the specific searches that

18 I performed. This matching of the term "instruct"

19 was not the only focus of my analysis. And if we

20 could take a break when it's convenient for you.

21   Q. Sure. I just want to finish what we're

22 talking about if you don't mind, if you can.

23   A. Sure.

24   Q. So but the '761 patent, the sentence says,

25 received via the -- in claim 1, received via the

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ROUGH DRAFT   160

1 touch sensitive display -- no, I'm sorry. Claim

2 1 -- excuse me. Can you strike that?

3   Claim 1, element F1 says received via the

4 touch sensitive display a user selection of an

5 upload option that instructs the device. Is that

6 correct?

7   A. Sorry. The question is, is that what

8 claim 1 contains?

9   Q. Is that what claim 1 says, instructs the

10 device?

11   A. Yes.

12   Q. So can you go back to the '472 patent --

13   A. Yes.

14   Q. -- which would be Exhibit 004A.

15   A. Okay. Back at the '472?

16   Q. Column 17, please.

17   A. 17.

18   Q. At line -- around line 14, there's FI, and

19 it describes here an upload option that instructs

20 the camera system to confine. Is that correct?

21   A. Yes, I see that.

22   Q. When you were discussing the device in

23 your declaration, did you mention this parallel

24 language in the '472 patent?

25   A. No, I don't believe that's in my

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1 declaration.

2   Q. Why not?

3   MR. XU: Objection, vague.

4   A. I don't know that I can answer why certain

5 things weren't in a document. There -- I'm also

6 uncertain of the legal principles regarding

7 construing terms across the patents, and so this

8 didn't seem relevant to me as something that I

9 considered in my analysis of the '761.

10   Q. So you were aware of this but you

11 considered it irrelevant. Is that right?

12   MR. XU: Objection, mischaracterizes

13 testimony.

14   A. Yeah, I don't know that I could

15 characterize it that way. I also see some

16 differences here in the language of the section, and

17 so they do appear similar, but again, from my

18 analysis of the '761, I didn't include it in the

19 report, in the declaration.

20   Q. What do you understand the intrinsic

21 record to mean when you're reviewing a patent?

22   A. Sir, if I could answer this question and

23 then we could have a break? Does that sound

24 acceptable?

25   Q. Sure.

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ROUGH DRAFT   162

1   A. Okay. Could you repeat the question,

2 please?

3   Q. What's your understanding of what

4 comprises the intrinsic record when you're

5 considering a patent or reading a patent?

6   A. It's my understanding that that is the

7 patent itself and the patent history.

8   Q. What about related patents? Are those

9 part of the intrinsic record, to your understanding?

10   A. I don't know that I have legal knowledge

11 of what the word related means there.

12   Q. In the same family, sharing the same spec.

13   A. Would those be part of the intrinsic

14 evidence? They're not something that I was asked to

15 analyze for this.

16   Q. Okay. So you don't know whether or not

17 they're part of the intrinsic record?

18   A. I would -- I'm not familiar with the legal

19 terminology that underlies that question.

20   Q. So were you instructed that a POSITA

21 reviews question of indefiniteness in light of the

22 intrinsic record?

23   A. Could you repeat?

24   Q. Are you aware of the legal standard that

25 the question whether a claim is indefinite -- or I'm

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ROUGH DRAFT   163

1 sorry. The question -- strike that. The indefinite

2 question, indefiniteness question is viewed from the

3 perspective of a person having ordinary skill in the

4 art. Are you aware of that?

5   A. The indefinite -- could you repeat that?

6   Q. The question of indefiniteness is viewed

7 from the perspective of a person having ordinary

8 skill in the art.

9   A. That's my understanding, yes.

10   And, sir, I'm going to go to the rest room

11 and turn off my camera if you don't allow me to have

12 a break.

13   Q. Okay. Let's have a break.

14   A. Thank you.

15   (Recess from 3:40 to time   )

16 BY MR. LESKO:

17   Q. Okay. Dr. Garlick, during the break did

18 you discuss your testimony at all with counsel?

19   A. I did not.

20   Q. Can you pull up for me Exhibit 2, your

21 declaration.

22   A. Okay. I have it.

23   Q. Please turn to paragraph 18.

24   A. Okay.

25   Q. Can you read the second sentence there in

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ROUGH DRAFT   164

1 that paragraph?

2   A. Sure. "I understand a patent satisfies

3 the definiteness requirement of its claims read in

4 light of the specification delineating the patent

5 and the prosecution history inform with reasonable

6 certainty those skilled in the art at the time of

7 the invention about the scope of the invention."

8   Q. Thank you. That's still your

9 understanding today. Is that right?

10   A. Yes.

11   Q. So further down in this same document,

12 paragraph 46. Let me know when you're there.

13   A. Okay. I'm there.

14   Q. The second sentence of the paragraph 46,

15 can you read that?

16   A. "Thus, reading the patent claims and

17 specification, a POSITA would be left to wonder what

18 the device refers to, controller, touch sensitive

19 display, camera system, cellular interface,

20 something that contains a camera system, or any of

21 the components recited before the introduction of

22 the device."

23   Q. Now, here you say reading the patent

24 claims and specification. You don't mention the

25 file history. Did you review the file history in

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ROUGH DRAFT   165

1 the -- I'm sorry, the prosecution history in forming

2 this opinion that you have here in paragraph 46?

3   A. Yes. As I mentioned before, I've reviewed

4 at a high level the prosecution history.

5   Q. So you don't mention in this section of

6 your declaration addressing the device the

7 prosecution history at all.

8   Was there anything in the prosecution

9 history that would lead one reading it to think that

10 the device was the controller?

11   MR. XU: Objection, vague.

12   A. So this sentence refers to the use of the

13 device within that claim. And within that claim, it

14 is unclear what that is. And the evidence is

15 contained within this section is what I used to form

16 that opinion.

17   Q. So this section does not mention anything

18 about the prosecution history. Is that right?

19   A. I believe that's correct.

20   Q. So let's just do this one at a time. Was

21 anything -- since you read the prosecution history,

22 you don't mention it here. Did anything in the

23 prosecution history lead you to think that the

24 device in the claim refers to controller?

25   A. I wouldn't say that it was specifically

ROUGH DRAFT   166

1 something that led me to believe that it was A or B.

2 It is that it is difficult to determine what is

3 being described by device because as I point out

4 here, device is used in many, many contexts within

5 the patent and it's unclear.

6   Q. So the sentence says you'd be left to

7 wonder what the device refers to, and there's a list

8 here. There's a list of items. Is that -- do you

9 agree with me?

10   A. Yes.

11   Q. So I'd like to look at the items one at a

12 time, if you could, with me. So -- and I know you

13 mentioned here that the patent claims and

14 specification. We don't need to discuss those. I'm

15 referring only to the prosecution history. Do you

16 understand me?

17   A. Yes.

18   Q. What I'm saying? Okay. Controller,

19 prosecution history, you know, office action

20 responses, IDSs, examiner office actions, you know

21 what all those are, right?

22   A. I have an understanding of those terms.

23   Q. So any of those documents that are part of

24 the prosecution history, in any of them did someone

25 call the controller a device that you're aware of?

ROUGH DRAFT   167

1   MR. XU: Objection, vague.

2   A. Not that I recall or not that I included

3   in my report.

4   Q. If they did, would you have included it in

5   your report?

6   A. I think that would have been relevant

7   information.

8   Q. Is there any --

9   A. Depends on the context though.

10   Q. How does it depend on the context? I

11   don't know if you have to qualify that answer. You

12   said that it would be relevant information. And why

13   would it be relevant information?

14   A. Well, the point here is that it was

15   difficult to determine what was meant by device.

16   And if there was something that indicated that it

17   was definitely one of these things or multiple

18   things or whatever, then I would find that relevant,

19   but it would depend on what it said. So that's what

20   I meant by --

21   Q. Of course. And I think we're in

22   agreement. So the point is that the prosecution

23   history can inform what the device might be based on

24   what you stated in your own declaration, right, as

25   to the law?

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ROUGH DRAFT   168

1   A. I would think so, yes.

2   Q. So if the prosecution history mentioned

3   that the controller is the device, that would be

4   relevant, we agree, right?

5   A. Well, we have references to device being

6   used for --

7   Q. In the spec. I'd like you to set aside

8   the spec. Remember I asked you to set aside the

9   spec?

10   A. Sorry.

11   Q. Let's focus on the prosecution history if

12   you don't mind.

13   A. Sorry. I forgot that caveat. So could

14   you repeat the question?

15   Q. Would it be relevant if the prosecution

16   said the device is a controller? Would that be

17   relevant hypothetically based on your understanding

18   of the law?

19   A. I would -- I would think so, yes, but I

20   would base --

21   Q. That's good. Thank you.

22   A. I have more. I would base that on its

23   context in the claim and how it was used. Device is

24   used all over the place, and so it's going to depend

25   on how it is contextualized and in what context it

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ROUGH DRAFT   169

1 happens, because device refers to many things.

2   Q. Okay. But the prosecution history --

3 let's just see -- let's try this a little easier for

4 you. Is the prosecution's history, is the mention

5 of the device or device in the prosecution history

6 relevant to the indefiniteness question in your

7 view?

8   A. I feel like we're asking questions about

9 hypothetical appearances of a word in a certain

10 context in a certain document, and I -- again, it

11 all depends on the context. If there's something

12 that said in claim 1F this means that and I didn't

13 see that, I don't know that that would be what it --

14 what it would contain. But what I'm saying is this

15 is very dependent on context because the term device

16 is a very generic term that gets used frequently.

17   Q. So if someone said in the prosecution

18 history the device in claim 1 is the touch sensitive

19 display, it doesn't say that -- let's say it doesn't

20 say that in the spec, it doesn't say it in the

21 claim. Based on your understanding of the

22 prosecution history is relevant, would that be a

23 relevant point to include in your declaration is

24 someone said in the prosecution history the device

25 is the touch sensitive display?

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ROUGH DRAFT   170

1   A. I would think that would be relevant

2 information. I would analyze it in the context that

3 it was presented.

4   Q. Of course. I understand.

5   So with respect to your list here,

6 controller -- let's start with controller, touch

7 sensitive display, and cellular interface, those

8 three items. Do you understand what I'm talking

9 about? Controller, touch sensitive display,

10 cellular interface. Those are three items on your

11 list. Is that right?

12   A. Yes. It looks like we've omitted camera

13 system? Is that --

14   Q. Right. I'm talking about the other three.

15 Controller, touch sensitive display, cellular

16 interface, those three items.

17   A. Yes.

18   Q. Are you aware of any part of the

19 prosecution history, just the prosecution history

20 referring to those items as the device?

21   A. In my review of the documents, I did not

22 find relevant portions that provided more indication

23 of what device may be. And if they were presented

24 in the prosecution history, that is likely a

25 different context than what they were presented in

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ROUGH DRAFT   171

1 the claim, and so I would have to make an analysis

2 based on that.

3   Q. Right. But here in your declaration,

4 there's no analysis of prosecution history for

5 either a controller, touch sensitive display or

6 cellular interface as a device.

7   A. This is based on my opinion from reading

8 the claim and the idea that it seems like some other

9 terms can be substituted in here and could also be

10 possible.

11   Q. Asking a very specific question. In the

12 prosecution history, based on your review -- you

13 reviewed the prosecution history. You said so. Is

14 that right?

15   A. I reviewed it at a high level and

16 performed searches of the document.

17   Q. So you reviewed at a high level the

18 prosecution history.

19   A. Yes.

20   Q. You performed a few searches of the

21 prosecution history.

22   A. I don't recall how many. I would

23 characterize it as more than a few.

24   Q. How many, ballpark?

25   A. Ten. Probably a few more. A dozen.

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ROUGH DRAFT   172

1   Q. Okay. So from your review, your dozen

2   searches, prosecution history, there's nothing in

3   the prosecution history you thought was worth citing

4   in this section covering the device?

5   A. That's correct.

6   Q. If there was, would you have cited it?

7   A. If I found something that I thought was

8   relevant that I should cite to, yes, I would have

9   cited to it.

10   Q. So paragraph 48 here of your declaration,

11   you say -- can you turn to that in Exhibit 2?

12   A. Paragraph 48 of the declaration?

13   Q. Yes.

14   A. Yes, sir, I'm there.

15   Q. You say that the camera device in claim 1

16   of the '761 patent would include a cellular

17   interface as specified in claim 1B. However, there

18   is no such cellular interface or any networking

19   interface in the functional block diagram of the

20   claimed camera system in figure 3 of the '761

21   patent. Do you see that?

22   A. I do.

23   Q. Aside from that figure, is a cellular

24   interface being part of a camera system mentioned in

25   the '761 patent, just in the text?

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ROUGH DRAFT   173

1   A. I'd have to go back and look. I don't

2 recall the -- every instance of a combination of

3 terms.

4   Q. So let's pull up the '761 patent. It's

5 Exhibit 4.

6   A. Okay. I've got Exhibit 4 open.

7   Q. Starting at line or column 12, line 28.

8 Starts alternatively. Do you see that sentence?

9   A. I do.

10   Q. Says, "The invention contemplates the use

11 of wired LAN, cellular" -- "Alternatively the

12 invention contemplates the use of wired LAN cellular

13 data networks, et cetera, as the interconnection

14 technology used by the inventive camera system."

15   Do you see that?

16   A. I do.

17   Q. So does the spec say based on that

18 sentence, reading that sentence, do you think the

19 spec says the camera system can use cellular data

20 networks?

21   MR. XU: Objection, vague.

22   A. I would say this sentence describes a

23 cellular data network used by the inventive camera

24 system.

25   Q. And what about 13, 16 through 22? I'm

ROUGH DRAFT   174

1 sorry, 13 -- column 13, line 10? Excuse me.

2   A. Would you like me to read it?

3   Q. Yes.

4   A. "In the second embodiment above, the

5 inventive camera system automatically connects to

6 the internet preferably via Wi-Fi, although cellular

7 network, et cetera, connection is also contemplated

8 when it has a predetermined number of pictures and

9 can so connect and will send the pictures to

10 virtually any internet destination without user

11 intervention."

12   Q. So does that describe a cellular network

13 being part of the camera system?

14   A. I would say that line does, yes.

15   Q. Or using the cellular -- I'm sorry -- that

16 the camera system can use the cellular network? Is

17 that fair to say according to that line?

18   A. Yes. I believe that line does.

19   Q. Are you also aware that figure 3 in the

20 '472 patent is a little bit different than figure 3

21 in the '761 patent?

22   A. I am aware of that, yes.

23   Q. Do you know why?

24   A. I don't know that I could answer why, no.

25   Q. So Dr. Garlick, are you familiar with the

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ROUGH DRAFT   175

1 concept of data roaming?

2   A. With regard to a cellular network?

3   Q. Yes.

4   A. Yes.

5   Q. What is data roaming? Well, just tell

6 you. Let me ask you this. What is data roaming?

7   A. So it's my understanding that it is

8 receiving or possibly transmitting data outside of a

9 usual network or a carrier's network. It's using

10 data in a place distant from some reference.

11   Q. Are you aware of data roaming fees? Have

12 you heard of them?

13   A. I've heard that term before, yes.

14   Q. So you're familiar with what data roaming

15 fees are?

16   A. In a general sense.

17   Q. So in association with data roaming, which

18 you just described, are there sometimes data roaming

19 fees?

20   MR. XU: Objection, vague.

21   A. I would say it depends on the activity of

22 the user.

23   Q. So if the user is uploading data while

24 data roaming, is it possible to incur a data roaming

25 fee as a result?

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ROUGH DRAFT   176

1   A. It's my understanding that these have

2 largely been eliminated, but the answer is for a

3 cellular carrier, I guess, that provided that

4 capability and for a user that performed that

5 operation, it's my understanding that there could be

6 additional fees associated with that.

7   Q. Are there any specific situations you're

8 aware of where data roaming has a fee associated

9 with it?

10   A. I don't know that I could give you

11 specifics. I think it would depend on the carrier

12 and the user and so forth, the plan also that a user

13 had.

14   Q. Let me give you an example. So

15 international, if you're traveling internationally

16 and you're roaming, is there typically a fee

17 associated with that?

18   A. Again, I think it depends on the carrier,

19 the plan. Yeah, I think it depends.

20   Q. Do you ever travel overseas?

21   A. I have, yes.

22   Q. Have you ever incurred a data roaming

23 charge as a result of using your phone overseas?

24   A. I believe I did. It was probably ten

25 years ago or so.

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ROUGH DRAFT   177

1   Q. Have you traveled overseas recently?

2   A. Not recently.

3   Q. So just introduced Exhibit 15. Can you

4 refresh your folder and pull up Exhibit 15.

5   A. Sure. Okay. I see it.

6   Q. So take a minute to just skim the

7 document. And from what you can see, who authored

8 this document? Not a person. I'm asking, you know,

9 who's -- what's the, I guess, entity that authored

10 this document.

11   A. Okay. This appears to be an FCC document.

12   Q. Okay. Are you familiar with who the FCC

13 is?

14   A. Yes.

15   Q. Okay. And what is it?

16   A. The federal communications commission.

17 It's a government entity that oversees

18 communication.

19   Q. Would you say that being that it's the

20 government entity overseeing communications, they

21 have a pretty good idea of how communications,

22 including cellular systems, operate?

23   MR. XU: Objection, vague.

24   A. I don't know that I can vouch for the

25 credibility of the FCC, but in general, I would --

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ROUGH DRAFT   178

1 I have no reason not to believe this document.

2   Q. Okay. This is the U.S. government entity,

3 I guess, in charge of communications. Would you

4 agree with that?

5   A. I think that's a fair general assessment.

6   Q. Turn to page 3 of this document.

7   A. Okay.

8   Q. See where it says last updated?

9   A. Yes, I do.

10   Q. Can you read that date to me?

11   A. Appears to be 4/21/20.

12   Q. Would you say it as words if you don't

13 mind? Just easier nor the record.

14   A. I think this is referring to April 21st of

15 2020.

16   Q. And turn back to page 1 --

17   A. Okay.

18   Q. -- if you could, please. If you look at

19 the second bullet point, says roaming rates for the

20 countries you plan to visit. If you're willing to

21 pay the charges, verify with your carrier that

22 international roaming is activated before you

23 travel. Then it says in these other bullet points,

24 For most U.S. customers, domestic service plans do

25 not cover usage abroad." It says, "Rates may be

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ROUGH DRAFT   179

1 much higher because of additional roaming fees on

2 foreign mobile networks and may vary from country to

3 country and network to network. Higher rates may

4 apply to all your phone's functions including voice

5 calls, voicemail, text messages, and internet

6 access."

7   Does that seem accurate to you, based on

8 your understanding?

9   A. So like I mentioned, I haven't traveled

10 internationally in quite awhile. So I can't answer

11 from personal experience, but that's what the

12 document says and I have no reason not to believe

13 this.

14   Q. Would this describe a possible situation

15 where you'd have roaming charges for using a

16 network?

17   MR. XU: Objection, vague.

18   A. Sorry. Could you repeat the question?

19   Q. Is it possible after reading this

20 document, would you say it's possible for charges to

21 be incurred as a result of roaming?

22   A. So this document seems to reference

23 international roaming. I would say given that

24 caveat, yes.

25   Q. Would you say data roaming always results

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ROUGH DRAFT   180

1 in charges if you upload or use data -- I'm sorry.

2 Scratch that. Can you strike that question.

3   Does data roaming always result in charges

4 so use of a roaming network and uploading data while

5 roaming, does that always result in charges?

6   MR. XU: Objection, vague.

7   A. I'm sorry Mr. Xu. I didn't hear.

8   MR. XU: Objection, vague.

9   A. I don't know. I think that would depend

10 on a user's plan and the cellular company and so

11 forth.

12   Q. Is there a potential for roaming-related

13 fees when you use a roaming network?

14   A. This document seems to describe fees that

15 may be incurred for international roaming.

16   Q. So you understand the just sort of

17 ordinary meaning of the word "potential" if you're

18 using it in conversation?

19   MR. XU: Objection, vague.

20   A. I mean, generally I have an idea what a

21 potential is.

22   Q. So if you're looking at a weather forecast

23 and it says potential thunderstorms, what does that

24 mean?

25   MR. XU: Objection, vague.

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ROUGH DRAFT   181

1   A. Something that could happen.

2   Q. Okay. Let's say you're looking at this

3 weather forecast and you want to go for a walk that

4 day, right? You know you're going to be walking

5 around a lot and the forecast says potential

6 thunderstorms. Can you -- what would you do to

7 prepare yourself for your walk?

8   MR. XU: Objection, vague.

9   A. I guess in that scenario you could

10 evaluate the risk. You could look outside to see if

11 you thought that report was accurate. You could

12 prepare yourself for it. You could stay home. You

13 could carry an umbrella. You could do any number of

14 things.

15   Q. So you can prepare yourself for the

16 potential storm before it happens. Is that right?

17   A. Yes, I would say so.

18   (Exhibit no.   marked)

19   Q. So pull up plaintiff's Exhibit 16.

20   A. Okay. All right. I have that pulled up.

21   Q. So what we were just talking about a

22 minute ago, a phone manufacturer doesn't know the

23 roaming conditions -- doesn't know about a user's

24 plan with respect to roaming conditions. Would you

25 agree with that?

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ROUGH DRAFT   182

1   A. I'm sorry. I didn't catch. What doesn't

2   know?

3   Q. A cell phone manufacturer, let's say an

4   Android phone manufacturer doesn't know each user's

5   data roaming plan or whether their plan involves

6   data roaming charges. Do you agree?

7   A. I would agree that the manufacturer does

8   not know what plan a user would purchase with their

9   cell phone.

10   Q. Can you -- would a Android manufacturer be

11   able to prepare for the possibility of such data

12   roaming charges?

13   MR. XU: Objection, vague.

14   A. And I -- on my previous answer, I believe

15   there are some devices that may be manufactured to

16   go in conjunction with a specific network. So I

17   don't think that's what we're talking about here,

18   but I just wanted to clarify that answer because

19   that thought just entered. And so could you repeat

20   the current question? I apologize.

21   THE REPORTER: Question: "Would a Android

22   manufacturer be able to prepare for the possibility

23   of such data roaming charges?"

24   MR. XU: Objection, vague.

25   A. Would an Android phone manufacturer be

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ROUGH DRAFT   183

1 able to anticipate -- we're talking about the

2 manufacturer of the hardware?

3   Q. Yes.

4   A. Or the operating system? Because when you

5 say Android phone, that implies a hardware that is

6 running the Android operating system. So I'm not

7 sure if you mean the hardware, the software, the

8 combination.

9   Q. Let's say the combination.

10   A. And the question is could that combination

11 be aware of the roaming -- I'm sorry. Could you --

12   Q. If you wanted to put together a

13 combination hardware and software device, could you

14 modify it because of the potential for data roaming

15 fees?

16   MR. XU: Objection, vague.

17   A. I don't know what you mean by modify it.

18   Q. Put it together in a way that takes into

19 account the potential for data roaming fees.

20   MR. XU: Objection, vague.

21   A. I don't think I understand the question.

22   Q. Let's go back to the example we just

23 talked about. You said if you had a potential storm

24 you would carry your umbrella as a potential. You'd

25 say there's a potential storm today so I'm going to

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ROUGH DRAFT   184

1   carry my umbrella.

2   By that same token, if you were saying

3   there's potential data roaming fees, can a system

4   manufacturer prepare for that possibility just like

5   you prepared for the possibility of a storm?

6   MR. XU: Objection, vague.

7   A. I don't know that I can answer this. I

8   don't know what you mean by prepare or modify the

9   functionality of the device. I just -- we're using

10 an analogy and moving it to hardware that doesn't

11 really -- it doesn't really make sense. I don't

12 know is my answer.

13   Q. All right. So going back to Exhibit 16.

14 It's a little fuzzy here so apologies. If you look

15 at page 11 of the exhibit.

16   A. Is that number 35601 at the bottom?

17   Q. 35600.

18   A. 600. Okay. I'm there.

19   Q. Okay. There's a definition here of

20 "potential." Can you see it toward the bottom of

21 this? Refers to a potential problem. See that?

22   A. I do. I'm going to need to zoom in here a

23 bit. Let me see. Sorry. I have bad eyes. Okay.

24 I'm zoomed in.

25   Q. So it says they're capable of being but

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ROUGH DRAFT   185

1   not yet in existence, latent. It refers to a

2   potential problem. Do you see that?

3   A. I do.

4   Q. Does that seem to match with your

5   understanding of what potential means?

6   A. I don't think I'd have an argument with

7   that definition.

8   Q. Okay. And can you avoid a potential

9   problem if you need to?

10   A. I think you could take steps to avoid a

11 potential problem.

12   Q. Okay. So going back to the discussion

13 about data roaming, do you have some understanding

14 of what types of plans users have for their cellular

15 phones or smartphones?

16   A. At a -- at a high level. It's been

17 several years since I shopped for that, so I would

18 say at a high level.

19   Q. So are you aware of some plans where data

20 uploads are generally free to the user?

21   MR. XU: Objection, vague.

22   A. I'm not familiar with the specifics of

23 certain carriers' cell plans.

24   Q. Let's talk about your own plan. So if

25 you -- you probably have internet with your own cell

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ROUGH DRAFT   186

1 phone plan. Is that correct?

2   A. Yes. I can receive cellular data.

3   Q. Can you send it as well?

4   A. Yes.

5   Q. And each time you send data, cellular

6 data, do you receive a charge associated with the

7 gigs that you sent?

8   A. So I believe, and I would need to consult

9 the bill, that I have a certain amount of data that

10 is included. And then if I go over that, there is

11 an additional charge.

12   Q. So would that additional charge be an

13 increase from over your earlier -- so let's say

14 you -- first you upload, you loaded something up

15 during your free period of -- or your free -- let me

16 start again.

17   You uploaded data and you're under your

18 limit. Are you charged for that?

19   A. Well, I'm charged as a component of the

20 monthly bill that I receive.

21   Q. Are you charged a fee specific to that

22 upload?

23   A. I don't know. I'm charged, I believe,

24 based on the amount of that allowance for data, I

25 guess. So I don't really know how to accurately

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ROUGH DRAFT   187

1 answer. I'm charged -- I don't know how AT&T breaks

2 that down into which portion of the money goes to

3 which service or whatever.

4   Q. So you pay a monthly fee, right? That's

5 your base fee, I guess you might call it, for your

6 data plan?

7   A. Yes.

8   Q. So let's set that aside and we're talking

9 upload by upload.

10   A. Okay.

11   Q. Or use by use. If your -- let's say you

12 needed to load some data, upload some data to the

13 internet and you are at that point in time under

14 your limit. Will you be charged a fee specific to

15 the data you upload at that point in time?

16   A. Not a fee in addition to the regular

17 monthly fee in that circumstance.

18   Q. And later in the same month, you're above

19 your plan but you really have to upload this data,

20 so you upload it. Are you charged a fee specific to

21 that second upload?

22   A. As that consumed data allotment in excess

23 of the fees charged for the base, then I would

24 assume there would be an additional fee associated

25 with that.

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ROUGH DRAFT   188

1   Q. Comparing that to the second upload to the

2   first upload, is there an increased fee for the

3   second upload?

4   MR. XU: Objection, vague.

5   A. Do you mean like per kilobytes or just in

6   total bill amount?

7   Q. Per kilobyte. So upload one, there's a

8   cost per kilobyte and upload two, there's a cost. I

9   think you said upload 1 is zero is the cost per

10   kilobyte and upload 2 you told me there's a fee for

11   those kilobytes.

12   A. That's not what I said. I've never

13   mentioned the word kilobyte. There may be -- in

14   other words, if your base charge is a hundred

15   dollars and you have allotment for a hundred

16   kilobytes, you could say that you're charged a

17   dollar a kilobyte and then anything over that incurs

18   an additional dollar per kilobyte fee.

19   So it gets back to my previous answer;

20   that is, it depends on how the cell phone company is

21   allocating the money that I pay, what they describe

22   it as. Do they describe this -- I mean, it's not

23   free to them to transmit data. And so, you know,

24   characterizing it as anything under a certain amount

25   is -- without charge, I don't know that I agree with

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ROUGH DRAFT   189

1   that. I think it depends on -- it depends on the

2   circumstance and the carrier and how they've

3   allocated their accounting, I guess.

4   Q. So let's say -- let's talk about a

5   different scenario. Let's say your -- let's go back

6   to what we were looking at before, these

7   international roaming charges.

8   A. Okay.

9   Q. Comparing the -- scratch that.

10   MR. LESKO: Do you want to take a break

11 for a few minutes? Are you ready for one or should

12 we keep going?

13   THE WITNESS: Sure, I'm ready for a break

14 if --

15   MR. LESKO: Okay. Can we just take a

16 five-minute break? Would that be okay?

17   THE WITNESS: Sure.

18   (Recess from 4:43 to 4:52)

19 BY MR. LESKO:

20   Q. Okay. Dr. Garlick, can you pick up -- can

21 you pull up, excuse me, Exhibit 4A.

22   A. The '472 patent?

23   Q. Yes.

24   A. I'm there.

25   Q. Column 14, line 37, if you'd go there.

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ROUGH DRAFT   190

1 Let me know when you're there.

2   A. Okay. Okay. I'm there.

3   Q. Says cellular service providers typically

4 charge a fee for internet access or emailing and so

5 an automatic feature to connect to the net or send

6 email for the purposes of transmitting pictures can

7 improve revenue generation for these companies.

8   What does that mean to you, improve

9 revenue generation? How would that work, in your

10 view, reading this?

11   MR. XU: Objection, vague.

12   A. Sorry. The question is what does it mean

13 to improve revenue generation?

14   Q. Well, it says providers charge a fee for

15 internet, so an automatic feature to connect to the

16 net or send email for the purposes of transmitting

17 pictures can improve revenue generation.

18   How would an automatic feature like this

19 improve revenue generation?

20   MR. XU: Same objection.

21   A. Well, I read that as a device or something

22 connecting and -- connecting to the network

23 necessarily uses the services of a cellular service

24 provider and therefore they would receive money for

25 that.

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ROUGH DRAFT   191

1   Q. They would receive money for connecting in

2 general or for the sending? How do you read that?

3   A. Just for internet access in general or

4 emailing.

5   Q. So if internet access though was part of a

6 base fee, let's say, why would use improve revenue

7 generation? Let's say it's implied that you're

8 always paying for the use before the -- I'm sorry.

9 Let's say you have a base fee to connect to the

10 internet that's part of your plan. So the fact that

11 you actually do connect and send pictures over the

12 internet, how would that improve revenue generation

13 in that circumstance?

14   MR. XU: Objection, vague.

15   A. Well, just having something that uses the

16 service in general. I mean, I could -- I could

17 envision devices that don't have a feature to

18 connect to the network, and those would not provide

19 revenue to a cell phone company.

20   Q. So a cell phone that doesn't connect to

21 the network at all? Is that what you're referring

22 to?

23   A. Well, I think -- I don't -- I don't see it

24 talking about cell phones in particular.

25   Q. So go -- start at line 14, 28. I'll read

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ROUGH DRAFT   192

1 to you. "Additionally, other aspects of the present

2 invention taught for the improved camera system are

3 applicable to the improved cell phone herein

4 disclosed, particularly the aspect of the present

5 invention associating multiple different utterances

6 to a single command. The aspect of the invention

7 allowing for automatic connection to a LAN or the

8 internet is also contemplated for use with cell

9 phone cameras. This aspect of the invention

10 ameliorates the prior art storage space limitation

11 which severely hampers the utility of the cell phone

12 camera."

13   Then there's the sentence you just read.

14 So are we talking about cell phones in this

15 paragraph in the sentence at 14, 37 of the patent?

16   A. I don't really know. It starts out with

17 an improved camera system, then it mentions cell

18 phone cameras. I just read there as you could have

19 a camera that doesn't have internet or doesn't have

20 a cellular connection and you could have a camera

21 that does, and the ones that do would make money for

22 the cell phone companies.

23   Q. Could you turn to your declaration which

24 is Exhibit 2.

25   A. Yes.

ROUGH DRAFT   193

1   Q. Paragraph 56, sorry, on page 15 for me

2 anyway?

3   A. Okay.

4   Q. If you'd go to 56.

5   A. Yes, I see that.

6   Q. The last sentence says, both seem to

7 indicate that selecting an image from a group is

8 sufficient to condition the upload of the group of

9 images.

10   Do you see that statement?

11   A. I do.

12   Q. How did you reach that conclusion?

13   A. Through review of the claim terms.

14   Q. So can you take me through it? Were you

15 looking at the language in the claim itself in both

16 cases?

17   A. Yes.

18   Q. Can you kind of take me through the

19 process of how you got there? Maybe let's start

20 with '472 patent, claim 1.

21   A. Okay. Okay. So in 1(f) -- 1(f)(ii), we

22 have a group of image sensor captured pictures being

23 enabled for upload. Then in 1(f)(ii)(3), at least

24 one image sensor captured picture stored in the

25 local memory has been designated through the touch

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ROUGH DRAFT   194

1   sensitive display as part of the group.

2   And so it's unclear to me what the group

3   is and -- in other words, it seems that a group of

4   pictures is uploaded after one or more of those

5   pictures are selected. And that's unclear.

6   Q. So when you read the claim, it says to you

7   a group of pictures is uploaded after one or more is

8   selected. Is that what you said?

9   A. I don't know that we have to assign an

10   order to it.

11   Q. Okay.

12   A. The group of pictures is uploaded during a

13   period where all three conditions are met. One of

14   those conditions is that at least one picture has

15   been selected. So once at least one picture is

16   selected, a group of pictures is uploaded.

17   Q. And of course the other two conditions

18   have to be met as well, right?

19   A. That's my understanding.

20   Q. That's from reading the claim language?

21   A. Yes.

22   Q. The plain language of the claim?

23   A. Well, during periods in which all three of

24   the following conditions are met, then the things at

25   the start of (f)(ii) will occur is my reading.

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ROUGH DRAFT   195

1   Q. From just reading the plain words of the

2 claim, right?

3   A. Yes.

4   Q. Can you pull up -- or actually it seems

5 like you've got this handy so can we talk a little

6 bit about claim 1 of the '761 as well?

7   A. Sure. Let me pull it up real quick.

8   Q. And that's also -- I don't know if you

9 have your own copy there, but we can look at

10 Exhibit 4 in the back or the claims.

11   A. Okay. We're on the '761. I'm at the

12 claims section.

13   Q. Okay. So claim 1, so your statement that

14 we read in your declaration a few minutes ago,

15 paragraph 56 of your declaration, Exhibit 2, you

16 say, the '761 patent claims are similarly worded.

17   So can you walk me through the same

18 process of how you got to the determination that in

19 '761 it indicates that selecting an image from a

20 group is sufficient to condition the upload of the

21 group of images?

22   A. Sure. Let me look through this real

23 quick.

24   Okay. So here we just kind of have a

25 similar construct of lack of clarity about what is

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ROUGH DRAFT   196

1 uploaded because we cause an upload of one or more

2 pictures after receiving an indication from the

3 local memory that a user has elected an option to

4 designate at least one picture from the group of

5 pictures stored in the local memory to be uploaded.

6   Again, it's not clear what is uploaded and

7 how that relates to what has been or if anything has

8 been designated by the user. And it's unclear what

9 the "group of" is.

10   Q. Well, before we talked about conditions,

11 right? And this one says -- this claim says "after

12 receiving." So the upload that's caused here, does

13 it have to happen after ii3, according to the claim?

14   A. I would say based on the language at the

15 end of (ii), after receiving those items 1, 2, and

16 3, that the connection and upload occur.

17   Q. You would say in this claim -- this is a

18 statement in your declaration -- that the '761

19 patent, like the 47 patent -- '472 patent, excuse

20 me, seems to indicate that selecting an image from a

21 group is sufficient to condition the upload of the

22 group of images.

23   A. I'm sorry. Was there a question?

24   Q. Just asking you to confirm the statement

25 in your declaration that when you read the language

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ROUGH DRAFT   197

1 of claim 1 in the '761 patent, it indicates to you

2 that selecting an image from a group is sufficient

3 to condition the upload of the group of images.

4   A. It's slightly different wording here, but

5 it's the same concept, which is that it is unclear

6 what is uploaded and how that relates to any

7 selection that has occurred.

8   Q. Well, is it the same concept in that this

9 claim indicates that selecting an image from a group

10 is sufficient to condition the upload of the group

11 of images?

12   A. What we have, one or more pictures

13 uploaded, and then I'm not sure that we've even

14 designated any pictures because we've elected an

15 option to designate. That to me is sort of an

16 option that says would you like to designate at

17 least one picture from the group?

18   And this is -- this is very wordy, and so

19 selecting one picture here, if that's what is meant

20 by option to designate, then that would condition

21 the upload of one or more pictures.

22   Q. Does it condition the upload of the group

23 of pictures?

24   A. It's not clear here what "group" is, and

25 so it conditions the upload of one or more pictures

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ROUGH DRAFT   198

1   if those are forming a group, then yes. It's

2   unclear what that group is. I don't know that I

3   have a better answer. It's confusing.

4   Q. So whatever the group is, it happens after

5   this condition or after this indication is received?

6   So let me just say that again. Whatever the group

7   is that gets uploaded, it happens after the

8   indication in ii3 happens?

9   A. Could you repeat that? I'm sorry.

10   Q. Whatever the group is that gets uploaded,

11   that has to happen after the (ii)(3) indication is

12   received according to the claim.

13   A. I think (3) will happen to condition (ii).

14   Other than that, I don't really know what this is

15   saying.

16   Q. There's language at the end of the claim

17   that says to be uploaded to the remote picture

18   hosting service.

19   A. Yes.

20   Q. What does that modify, in your view?

21   MR. XU: Objection, vague.

22   A. (Witness reviewing document)

23   Q. So we're running out of time here. I

24   can -- let's just withdraw that question and move

25   on.

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ROUGH DRAFT   199

1   So Exhibit 4A, can you turn to Exhibit 4A

2   for a minute.

3   A. '472 patent?

4   Q. Yes.

5   A. Yes. Okay.

6   Q. So at 12 -- column 12, lines 3 through 7

7   says -- are you there?

8   A. Yes.

9   Q. It says, the camera system preferably

10   includes the ability for the user to indicate to the

11   camera which pictures to offload so that the camera

12   offloads only those pictures that are so indicated

13   by the user. Do you see that?

14   A. I do.

15   Q. Says the word "includes." Are you

16   familiar with includes? What does that mean to you?

17   MR. XU: Objection, vague.

18   A. That it preferably has the ability, that

19   it may be -- I don't know. It could -- can we pull

20   up the dictionary again?

21   Q. Let me ask you a question. Does the word

22   includes -- if it includes an ability, does that

23   exclude other abilities?

24   A. I don't know.

25   Q. Well, I'll just give you an example.

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ROUGH DRAFT   200

1 Let's say the camera also has a voice recognizer and

2 in this sentence says -- so let's say my camera can

3 recognize words. My camera also includes the

4 ability for the user to indicate to the camera which

5 pictures to offload. Is it fair to say that that's

6 a possibility? So includes -- the word includes

7 doesn't prevent the camera from having other

8 features, right?

9   MR. XU: Objection, vague.

10   A. I feel like I'm trying to get into the

11 head of the author of this language, and I don't

12 know that I can do that to -- I feel like you're

13 asking me to tell you what they meant and --

14   Q. You don't have to get into the head of an

15 author. So let's just say there's a person having

16 ordinary skill in the art and you're supposed to

17 read it from that perspective, the specification,

18 right?

19   A. Uh-huh.

20   Q. Is that your understanding?

21   A. Yes.

22   Q. Does includes signal, especially in patent

23 law, does includes signal something to a person

24 having ordinary skill in the art? Does that have

25 any meaning, includes, that you're aware of?

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ROUGH DRAFT   201

1   A. Well, you referenced patent law. I

2 don't -- I don't know a legal definition of this.

3   Q. So when you analyze patent claims, do you

4 look at words like comprising and includes?

5   A. Yes.

6   Q. Okay. And what do those mean versus words

7 like consisting of? Do you know the difference when

8 you read a patent claim?

9   A. I suppose I could -- I could discern the

10 difference in those terms.

11   Q. What's the difference between comprising

12 or includes versus consisting of? Can you explain

13 it?

14   A. I don't know. You're asking me to define

15 some very vague terms here, and I --

16   Q. I'm not actually. I know you read patent

17 claims and apparently I think you say you can

18 discern what they mean from the perspective of a

19 person having ordinary skill in the art.

20   So does includes and comprising, including

21 and comprising signal something to you when you read

22 a patent claim that would be different from

23 consisting of when you read a patent claim?

24   MR. XU: Objection, vague.

25   A. You're asking how includes and comprising

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ROUGH DRAFT   202

1   are different from consisting of?

2   Q. Yes, when you read a patent claim, how are

3   including and comprising different from consisting

4   of?

5   A. I think I would have to see the context of

6   this to understand because here we have also the

7   modifier preferably, which I know has legal

8   implications. And so I feel like I'm being asked to

9   define -- to perform claim construction on includes,

10 and -- or to define it, and in this context with the

11 modifier preferably and so forth, I'm not sure I can

12 give you a good answer.

13   Q. So when you read a patent claim generally,

14 I'm not asking in this context, when you read patent

15 claims for any case you've been retained for as an

16 expert witness, if you see including in a claim and

17 you see consisting of in a different claim, is it

18 clear to you what the difference is between those

19 two phrases, including versus consisting of?

20   MR. XU: Objection, vague.

21   A. I would say that those terms are similar,

22 but it -- given the context here with preferably,

23 I -- I don't --

24   Q. I'd say the context here has zero to do

25 with my question. Are you aware of that?

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ROUGH DRAFT   203

1   A. Well, you're asking for a definition, and

2 I'm saying that the definition is somewhat dependent

3 on the context. And here we have not just includes

4 but preferably includes, and I understand that

5 preferably has some legal meaning and --

6   Q. Can you close the document for me here,

7 the patent?

8   A. Sure. Okay.

9   Q. So when you read a patent claim, not art,

10 not that portion of the spec, not anything else,

11 just read a patent claim that has the word

12 including, does that -- and it lists three items,

13 does that mean a device that has four items wouldn't

14 infringe that claim?

15   MR. XU: Objection, vague.

16   A. I don't know because if it had the word

17 optionally including in front of it, then it's a

18 different scenario.

19   Q. So including and consisting of don't have

20 special meaning when you read patent claims? Those

21 terms don't signal anything special to you?

22   A. I don't know what you mean by signal

23 something special.

24   Q. Well, just signal that there's -- like

25 that has a meaning in claim drafting, including has

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ROUGH DRAFT   204

1 meaning in claim drafting and consisting of has a

2 different meaning in claim drafting.

3   A. And sorry. What was the question?

4   Q. In claim drafting, are you aware of a

5 difference between including and consisting of, just

6 those two words in a vacuum?

7   MR. XU: Objection. He's just a technical

8 expert.

9   A. Yeah, I -- I don't know. This feels like

10 a legal terminology question and I don't -- I'm not

11 an attorney.

12   Q. So what does a person having ordinary

13 skill in the art understand including to mean in a

14 patent claim?

15   MR. XU: Objection, vague.

16   A. Just in general what does a person of

17 ordinary skill consider that word to mean?

18   Q. Yes.

19   A. The things that are included or

20 incorporated.

21   Q. Does that mean the things that are

22 incorporated are all the things of the whole? Never

23 mind. Let's withdraw that question. Too confusing.

24   Let's move on. So the claim recites a

25 user selection of an upload option, the '472 patent

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ROUGH DRAFT   205

1   claim.

2   A. I'm sorry. Let me pull that up.

3   Q. Let me take that back. I apologize. So

4   it says here, looking at '472 patent, claim 1,

5   element (ii)(3) in Exhibit 4A, column 17?

6   A. I'm sorry. Let me -- I had that document

7   closed.

8   Q. Exhibit 10.

9   A. Okay.

10   Q. Exhibit 4A.

11   A. 4A.

12   Q. Column 17 and we're looking at line 34.

13 Do you see that?

14   A. Okay. Yes.

15   Q. Okay. It says at least one image sensor

16 captures pictures stored in the local memory has

17 been designated through the touch sensitive display

18 as part of the group of pictures to be uploaded to

19 the picture hosting service.

20   So the claim refers to the touch sensitive

21 display as part of the designation process. Would

22 you agree?

23   A. I agree that the touch sensitive display

24 is involved in this process.

25   Q. So picture selection is done through the

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ROUGH DRAFT   206

1 touch sensitive display in this case, right,

2 pictures are uploaded?

3   MR. XU: Objection, vague.

4   Q. Can you answer the question?

5   A. I'm sorry. I'm still -- I'm still

6 reading. Could you repeat the question?

7   Q. Ms. Shelton, can you repeat the question?

8   THE REPORTER: Question: "So picture

9 selection is done through the touch sensitive

10 display in this case, right, pictures are uploaded?"

11   MR. XU: Objection.

12   A. Yeah, there was -- there was extra

13 information added on to that question.

14   Q. I apologize. Let me ask it again. I'm

15 sorry.

16   A. Okay.

17   Q. The claim says -- so according to this

18 claim, the picture is designated through the touch

19 sensitive display, at least one picture is

20 designated through the touch sensitive display

21 according to this claim. Is that correct?

22   A. Yes.

23   Q. Can you turn to 11, column 11 of this same

24 document.

25   A. Okay. I'm there.

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ROUGH DRAFT   207

1   Q. So starting at line 36, says another

2   aspect of the present invention is to employ a wink

3   detecter as part of the viewfinder of the camera.

4   It says at line 42, the wink detector is

5   contemplated to be used for shutter trip and/or AF

6   activation or lock, among other things.

7   Then on line 46 of the same paragraph, it

8   says, in this case the wink detector preferably acts

9   as a user selection detector device and that the

10   user may select an item pointed to by the gaze

11   tracker pointer where that is otherwise highlighted

12   by the gaze tracker simply by winking.

13   So based on this description, do you

14   understand the wink detector to be a tool for

15   selecting?

16   MR. XU: Objection, vague.

17   A. They describe it here as a user selection

18   detector device.

19   Q. Is that a yes?

20   A. I think you used the word tool, and I

21   don't see that here. So, no.

22   Q. Okay. So it's a selection device. The

23   wink detector is a selection device?

24   A. That's what this line says.

25   Q. It's a user selection device according to

1 this line. Do you agree?

2   A. This line says the wink detector

3 preferably acts as a user selection detector device.

4   Q. And if the item -- it says here select an

5 item. If the item was a -- let's say a menu button,

6 would that work consistent with this description?

7   MR. XU: Objection, vague.

8   Q. It may be helpful to read at 50. It says,

9 "It is contemplated that the detected wink would

10 preferably function in the camera system similarly

11 to a left mouse click on a computer system when

12 dealing with menus and icons." Do you see that?

13   A. I do. And could you repeat the original

14 question?

15   MR. LESKO: Ms. Shelton, would you read

16 that back.

17   THE REPORTER: Question: "It says here

18 select an item. If the item was a -- let's say a

19 menu button, would that work consistent with this

20 description?"

21   A. So you're asking if we replaced a selected

22 item and -- I'm sorry. Which selected item are we

23 referring to?

24   Q. Selected item at forty -- line 48 here.

25 Says a user may select an item pointed to by the

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ROUGH DRAFT   209

1 gaze tracker.

2   A. Okay. And the question was can we

3 substitute that for something. Could you repeat

4 that part?

5   Q. Maybe I could just ask it more clearly.

6 Can you use -- based on this description, is this --

7 would a POSITA understand the wink detector can be

8 used to select items on a screen?

9   A. I believe that's what it says here.

10   Q. Okay. Now let's go to column 9 of this,

11 Exhibit 4A, at line 32.

12   A. Okay. I'm there.

13   Q. So let's just start at 32. Says, another

14 aspect of the present invention adds touch bed

15 technology to the prior art camera system. Then

16 let's skip down to be efficient here to 39 in the

17 same column, line 39. In a first preferred

18 embodiment, the EVF or LCD display displays the menu

19 that's above and the user moves the cursor or mouse

20 pointer around this image by use of his finger or on

21 the touch pad.

22   A. I see that.

23   Q. This operation is virtually identical to

24 that of the mouse in laptop computers and is well

25 understood in the art. That's what it says here at

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ROUGH DRAFT   210

1 line 42. Are you with me?

2   A. Yes.

3   Q. Is this touch pad another method of

4 selection disclosed here in the '472 patent? And to

5 be more specific, does it look like this is a user

6 selection method?

7   MR. XU: Objection, vague.

8   Q. Does this describe -- what we just

9 described, does this describe the touch pad as a

10 user selection device?

11   MR. XU: Objection, vague.

12   Q. Let me try that again. Does this section

13 describe a touch pad as a device that can be used as

14 part of the camera system for making selections?

15   MR. XU: Objection.

16   A. I see it described as something similar to

17 the touch pad mouse pad. Oh, okay, on laptop

18 computers.

19   Q. Here, let me try to help you here.

20   A. Okay.

21   Q. It says -- and I missed this before so I

22 apologize. Says here in column 9, line 46, it is

23 also preferred that the touch pad software implement

24 tapping recognition, also well known in the art, so

25 that the user may operate this shutter button, make

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ROUGH DRAFT   211

1 a selection, et cetera, simply by tapping the touch

2 pad with his index finger. Do you see that?

3   A. I do.

4   Q. Does that describe the touch pad being

5 used by a user to make a selection?

6   A. Yes.

7   Q. Thanks. Okay. So let's go to 835 to --

8 column 8, line 35?

9   A. Oh, sorry. Same patent?

10   Q. Yes.

11   A. Okay. This was what number?

12   Q. We're still in Exhibit 4A.

13   A. 4A. Okay.

14   Q. Says the icon is selected by the user

15 gazing at the icon for some predetermined amount of

16 time.

17   A. I'm sorry. Could you give me the column

18 number again and the line number?

19   Q. Yes. Column 8, line 35.

20   A. 35. I'm there.

21   Q. The icon -- it says, I quote, the icon is

22 selected by the user gazing at the icon for some

23 predetermined amount of time.

24   A. I agree.

25   Q. Okay. Does that seem like a -- no. Is

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ROUGH DRAFT   212

1 that another user selection mechanism, gazing at the

2 icon?

3   MR. XU: Objection, vague.

4   A. I would say it's an icon selection

5 mechanism.

6   Q. Okay. Here in the same column, 8, of

7 Exhibit 4A at line 45, says the user preferably then

8 utters a command indicating his acceptance or

9 rejection of that mode in this example such as yes

10 or no. If the command uttered indicates acceptance,

11 the camera system implements the command.

12   So would uttering a command be a selection

13 mechanism here?

14   MR. XU: Objection, vague.

15   A. The command is the thing that we're

16 wondering if that is a selection mechanism? I'm

17 sorry. Could you repeat the question?

18   Q. Does the patent describe here speech

19 recognition as a selection mechanism for a user?

20   MR. XU: Same objection.

21   A. I would say it indicates the acceptance or

22 rejection of a mode. That's how it's described

23 here. I don't know that I have other context to

24 ascribe different words to it. The command

25 indicates the acceptance or rejection of a mode.

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ROUGH DRAFT   213

1   Q. Let's go to column 5 of Exhibit 4A.

2   A. Okay.

3   Q. At line 14.

4   A. All right.

5   Q. Says, more specifically, move Christmas

6 would indicate that the currently referenced

7 photograph is to be moved to the Christmas folder.

8 Do you see that?

9   A. I do.

10   Q. So to move Christmas, select a photograph

11 to be moved to the Christmas folder according to

12 this statement.

13   A. It would indicate that the

14 currently-referenced photograph is to be moved to

15 the Christmas folder, yes.

16   Q. So is that a way of selecting a photograph

17 to be moved to the Christmas folder in your view?

18   A. It seems to me like it's already been

19 selected because it's currently referenced. But

20 again, I don't know that I have context to ascribe

21 different words other than what's used here to this

22 process.

23   Q. It says -- continues on line 16 of column

24 5, an alternative example is John move new year's,

25 indicating that the picture named John, either

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ROUGH DRAFT   214

1 directly named or by association, depending on

2 embodiment, be moved to the folder named new year's.

3   So that statement John move new year's,

4 did that select picture named John to be moved to

5 the folder named new year's?

6   MR. XU: Objection, vague.

7   A. Again, I don't know that we can add more

8 words to this than what are here. It moves a

9 picture named John.

10   MR. XU: Karen, let us know the time?

11   THE REPORTER: I show we have six minutes

12 left.

13   MR. LESKO: Can we go off the record for

14 just a minute since we're running out of time?

15   MR. XU: Okay.

16   MR. LESKO: Thanks.

17   (Off record from   to   )

18 BY MR. LESKO:

19   Q. So if you look at claim 1 of the '472

20 patent, it refers to a group in line -- or in

21 element (f)(ii) and it refers back -- then it refers

22 to the group in element (f)(ii)(3). Do you see

23 that?

24   A. Yes.

25   Q. So in your view is that the same group

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1   based on antecedent basis?

2   A. I don't know. I don't know.

3   Q. In your declaration did you say that

4   there's an antecedent basis issue in claim 1 of the

5   '472 patent?

6   A. With regard to group, I said that in the

7   '761 patent that it's -- that it's unnecessary to

8   use that term in paragraph 62. I just have to

9   confess to general confusion about what is being

10   specified to be uploaded, if anything, and what

11   groups are. And so I don't know that I'm going to

12   have a good answer for questions that try to make

13   sense of that because for the reasons I've pointed

14   out, it is -- it is confusing to try to determine

15   when one or more images have been designated that a

16   group of images is uploaded. And --

17   Q. Okay. So I think we're going to be

18   wrapping up here. Jason, just want to remind you,

19   we're looking for -- Steve Lisa referred earlier to

20   a list of potentially privileged docs. We want a

21   privilege log with respect to those documents. Do

22   you remember what I'm talking about?

23   MR. XU: Yes. I thought Dr. Garlick's

24   answer has cleared that up because I think he

25   answered that the documents he reviewed after

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1 engagement of this case he did not consider --

2 consider any of those documents for the claim

3 construction declaration. I thought that he

4 answered that question, so I thought that issue was

5 clear.

6   MR. LISA: Jason, I think -- hold on.

7 Steve here. Let me mute my phone. Okay. All

8 right.

9   So the answers are what caused the list.

10 So that we're clear, we want a list, just a list

11 that would qualify as a withheld -- as a privilege

12 log of documents that your expert was given because

13 he limited his answers to preparation of his opinion

14 for this declaration. And so if he -- and wouldn't

15 answer the broader question as to whether or not he

16 was given other documents that he reviewed or looked

17 at or considered after his retention.

18   And so we would like a list of those

19 documents. And if necessary, we can go back through

20 the transcript and see his answers to the questions

21 that he wanted to answer, not to the questions that

22 I asked on that topic.

23   So if there were documents given to the

24 witness that were not provided to us that you're

25 withholding because they are privileged, then those

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1 we're likely to take to the Court and we're going to

2 have them submitted to the Court with your log.

3 Okay? Because we think we're entitled to have them,

4 but the judge will decide whether you're right or

5 not under Rule 26. And that's what the issue is.

6   So I don't want to fight about it. I'm

7 not asking you to disclose the material of what's in

8 those. We want to know whether there were documents

9 given to this witness that he looked at and

10 considered, and we can debate in front of the judge

11 whether they're privileged or not.

12   MR. XU: So I just want to make clear. So

13 your request is -- I just want to make sure. Your

14 request is that you want a log of all the documents

15 that the expert has received from us after his

16 retention on this case regardless of the purpose,

17 even though it may or may not be in connection with

18 the claim construction?

19   MR. LISA: Well, if it's in connection --

20 no, if it's in connection to the declaration and you

21 gave it to us, we don't need it. The debate we're

22 going to have is whether Rule 26 allows him to

23 review, look at and consider documents and then say

24 since this is the final draft of my declaration, I

25 didn't rely on it in this, my final draft, my

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1 declaration.

2   So if there were earlier drafts that were

3 looked at, if in deciding how to write it you went

4 through ten drafts of it, he looked at other

5 documents, then you guys narrowed it down, we're

6 still entitled to it, in my view.

7   MR. XU: Okay. But only regarding --

8 relating to the claim construction declaration,

9 because I just want to make sure that the scope is

10 clear. Because I think this might be --

11   MR. LISA: I think that's right. I don't

12 disagree with you.

13   MR. XU: I just want to make sure because

14 you can imagine we might give him documents for

15 other purposes.

16   MR. LISA: Sure, validity, infringement.

17 I get it. I'm not saying that. I'm talking about

18 for the forming of an opinion and for deciding what

19 to say about claim construction, we're entitled to

20 those documents. You may just decide to agree with

21 us and give them to us, but that's up to you. Okay?

22 But that request still exists.

23   And the other thing I think we want to

24 make clear is that should Dr. Garlick provide a

25 supplemental declaration, we may and reserve the

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1 right to consider deposing him again if he issues a

2 supplemental declaration, which I don't know if he

3 will, but if he comes back and corrects and changes

4 all this testimony in a declaration, then we would

5 want to depose him again.

6   MR. XU: So you're talking about --

7   MR. LISA: Reserve the right.

8   MR. XU: You're talking about a

9 supplemental to his current declaration?

10   MR. LISA: Correct, correct.

11   MR. XU: Okay.

12   MR. LISA: So if we submit an expert

13 declaration, then Dr. Garlick -- and a brief and

14 Dr. Garlick decides to recast or change or submit

15 another declaration, then obviously we would take

16 the position we're entitled to depose him again and

17 the judge can tell us how much time we get. But

18 we're not waiving that right. That's all I'm

19 saying. We can save that fight for later should it

20 occur. Okay?

21   MR. XU: We disagree. You had seven hours

22 on the record for him, and that's it. But I agree.

23 We will have that fight if it comes to that.

24   MR. LISA: Okay. Thank you, Dr. Garlick.

25 Thanks, Jason. Thank you.

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1   THE REPORTER: Mr. Xu, would you like to

2   purchase a copy of the transcript?

3   MR. XU: Yes.

4   THE REPORTER: And then is two weeks okay

5   for the final? I know a rough draft was ordered

6   which will go out this evening.

7   MR. LESKO: I think we need a final

8   sooner, don't we?

9   MR. LISA: Jason, if you and I -- 99

10   percent of the time, in my experience, a draft is

11   good enough for a brief that we're writing, but

12   we're all under tight time constraints. So now that

13   we have a draft coming out, unless we have issues --

14   Jason, you and Justin can talk, but my view would be

15   that we can agree to brief writing based on the

16   draft of the deposition.

17   However, I think what we he don't want to

18   do is have Dr. Garlick disagree with something that

19   was done. So my request would be that you have

20   Dr. Garlick review the draft declaration and let us

21   know if there are corrections that he wants made

22   based on the draft and then you, TCL and CEV can

23   agree that the parties can proceed with the draft

24   declaration if that's okay, draft transcript.

25   MR. XU: I think we can agree that we can

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1 do the briefing based on the draft transcript.

2 That's fine. Regarding -- obviously we will have

3 Dr. Garlick review the final transcript once it

4 comes out, but I just don't know the timing.

5   MR. LISA: Okay. Well, if the draft comes

6 out tonight, we have a brief due in a week, I think,

7 right, a little over a week, week from Monday, so we

8 have no choice but to use that to prepare any

9 opposing declaration and write the brief. If there

10 are errors that are apparent to Dr. Garlick before

11 our brief is due, we would request that you let us

12 know.

13   MR. XU: Based on the draft?

14   MR. LISA: Correct, yes, sir.

15   MR. XU: The rough transcript? Your

16 request is noted. I will have to get back to you on

17 that.

18   MR. LISA: That's fine. We've made the

19 request. So that's fine. Okay. I guess that's

20 everything.

21

22   (Deposition concluded at 6:04 p.m. CST)

23   -oOo-

24

25